



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.11.2015

CORAM:

THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN

CrI.O.P.(MD)No.10842 of 2015  
and M.P.(MD)No.1 and 2 of 2015

R.Jeya Lakshmi

... Petitioner/Accused

Vs.

S.Raihana

... Respondent/Complainant

PRAYER: Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in STC.No.667 of 2014 on the file of the Judicial Magistrate No.I, Fast Track Court No.I, Madurai, and quash the same as illegal.

For Petitioner : Mr.R.Srinivasan  
For Respondent : Mr.R.Pandi Maharaja

#### ORDER

The petitioner has come forward with the present Criminal Original Petition to quash the case in STC.No.667 of 2014 on the file of the Judicial Magistrate No.I, Fast Track Court No.I, Madurai.

2.The case of the petitioner is that there is a delay in filing the complaint and that the Fast Tarck Court ought not to have taken up the case on merits without deciding the issue on laches first. That apart, he stated that in the complainant it has been mentioned that the date of cheque is mentioned as 16.06.2014, which is said to have been returned and thereafter, some other cheques have been given and the same are said to be returned as insufficient fund. The petitioner further stated that the trial Court has no jurisdiction to take up the matter and try the same. The cheque number, the date mentioned in the cheque and the reason for return are entirely different issue and the petitioner will be put to great hardship if any further proceedings are initiated and it amounts to double jeopardy. He also stated that the petitioner cannot be prosecuted for an offence under Section 420 of IPC simultaneously under Section 138 of Negotiable Instruments Act. The petitioner further contended that the petition in S.T.C.No.667 of 2014 has been filed on 17.11.2014 and there is no explanation for the delay in filing the petition and the Trial Court ought not to have numbered and taken up the case on merits.



3. In reply, the counsel for the de facto complainant submitted that two cheques have been issued and that the de facto complainant has filed a case with regard to one cheque and with regard to another cheque, another case is pending and it is yet to be numbered. He also drew the attention of this Court to the typed set of papers to show that the case number has not been mentioned in the certified copy and that the document has not been filed in the court. He further drew the attention of this Court to the Judgment reported in 2015(1) LW (Crl.) 231 (Pawan Kumar Ralli Vs. Maninder Singh Narula) to paragraphs 23 to 25 which read as follows:-

"23. In view of the settled principles of law in Rakesh Kumar Jain, MSR Leathers. Subodh S. Salaskar (supra) and in the peculiar facts and circumstances of the case, we are of the considered opinion that the High Court was not right in quashing the complaint merely on the ground that complaint is barred by limitation, that too a plea which was taken for the first time before the High Court. On the other hand, the High Court ought to have remanded the matter to the Trial Court for deciding the issue of limitation.

24. At the same time, we want to make it very clear that by this observation we are not laying down a legal proposition that without even filing an application seeking condonation of delay at an initial stage, complainant can be given opportunity at any stage of the proceeding. As already discussed by us in the foregoing paragraphs, we have come to the irresistible conclusion, to afford an opportunity for the complainant to move an application seeking condonation of delay, under the peculiar facts and circumstances of the case.

25. For all the aforesaid reasons, in order to meet the ends of justice, we exercise our discretion under Article 142 of the Constitution of India and set aside the impugned judgment of the High Court quashing the criminal proceedings and restore the criminal proceedings before the Trial Court. The appellant is permitted to file an application for condonation of delay before the Trial Court and if such an application is filed, the Trial Court shall be at liberty to consider the same on its own merits, without being impressed upon by any of the observations of by this Court, and pass appropriate orders."

4. Heard both parties.

5. Section 140(2) of the Negotiable Instruments Act, was amended and Section 142(4) was introduced in order to overcome the technicality of the limitation and it gives right to the Court to condone the delay.

6. Though rival contentions have been taken by both the parties on the merits of the matter this Court is not inclined to go into the merits under Section 482 of Criminal Procedure Code and hence,



the parties will have to take all their pleadings before the appropriate forum.

7. In the aforesaid observation, the Supreme Court has permitted the complainant to file a petition to condone the delay before the Trial Court by exercising the discretion under Article 142 of the Constitution of India. It has been stated by the de facto complainant that the petition for condonation has already been filed, but it is not numbered, but, without numbering the same, the main petition cannot be numbered. That being the case, this Court while accepting the contention of the petitioner herein in the light of the decision of the Apex Court in paragraph 24 and to the amendment to proviso 142(4), for condonation of delay, if any petition will be filed a decision should be rendered by the Trial Court after hearing both parties and in case, if the delay is condoned then the matter could be numbered and the same will be taken up for further hearing.

8. In view of the aforesaid discussion, the Criminal Original Petition is disposed of and the matter is remitted back to the Trial Court to decide the application within a period of two months from the date of receipt of a copy of this order. Consequently, connected M.Ps. are closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate No. I, Fast Track Court No. I,  
Madurai.

2. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO MR. R. SINIVASAN, ADVOCATE IN SR NO. 67261

+ 1 cc to Mr. R. MOHAMMED RAJAPDHEEN SR 67141

NBJ

TE/AAL-MPA/ : 14/12/2015 : 3P/5C

Cr1.O.P. (MD) No. 10842 of 2015

and

MP (MD) No. 1 and 2 of 2015

24.11.2015