

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.331 of 2016

and

Crl.M.P.No.2233 of 2016

K.BalanPetitioner/Accused

Vs.

M/s.K.P.N. Textiles,
Rep. by its Proprietor,
P.Nithiyanantham Respondent/Complainant

Prayer: Criminal Revision Case filed under Section 397 (1) r/w. 401 of the Code of Criminal Procedure, to set aside the order dated 05.12.2015 passed in S.T.C.No.4683 of 2015 in C.M.P.No.7748 of 2015 on the file of the Judicial Magistrate Court No.II, Erode, by allowing the present criminal revision petition.

For Petitioner : Mr.I.C.Vasudevan

For Respondent : Mrs.R.Renukadevi

ORDER

This Criminal Revision Case is directed the order dated 05.12.2015 passed by the learned Judicial Magistrate No.II, Erode, in S.T.C.No.4683 of 2015 in C.M.P.No.7748 of 2015.

2. The learned counsel for the petitioner would mainly contend that the trial Court, without appreciating the facts of the case, erroneously allowed the petition filed by the respondent herein to condone the delay of 22 days in filing the complaint. It is further contended that there was no reason stated in the affidavit filed by the petitioner therein/respondent herein to condone the delay of 22 days. Subsequently, the trial Court questioned about the contents in the affidavit and adjourned the case to next date and directed the revision petitioner herein to file additional counter. At that time, the handwritten portion was subsequently inserted in the original affidavit. The trial Court, erroneously allowed the petition filed by the respondent herein for condoning the delay and hence, the order passed by the trial

Court has to be set aside and the criminal revision case has to be allowed.

3. The learned counsel for the respondent would submit that the trial Court, after considering the entire facts and circumstances of the case, came to a correct conclusion in allowing the petition filed by the respondent herein for condoning the delay of 22 days and therefore, there is no infirmity or illegality in the order passed by the trial Court and hence, the criminal revision case has to be dismissed.

4. This Court considered the submissions made by the learned counsel on either side and perused the entire records produced on the side of the petitioner.

5. In this case, the respondent herein lodged a private complaint before the learned Judicial Magistrate No.II, Erode, under Section 138 of the Negotiable Instruments Act against the petitioner herein and statutory legal notice was issued to the revision petitioner/accused on 02.06.2015 calling upon the accused to pay the amount of Rs.10,00,000/- with incidental charges within 15 days after receipt of this notice. The legal notice was received by the accused on 03.06.2015 and he replied through his counsel with false and vexatious allegations. Then the private complaint was preferred by the complainant before the trial Court and in preferring the said complaint, there was a delay of 22 days. Hence, to condone the said delay, C.M.P.No.7748 of 2015 was filed before the learned Judicial Magistrate No.II, Erode. The learned Magistrate, in his order, clearly stated as follows:-

This complaint was filed before this Court on 8.8.15 and this complaint was taken on file on 5.10.15. If reasons were not stated by the petitioner in the petition at the time of filing this court would have returned the same for complying. But it could be seen this case was not returned. So at this filing itself the petitioner must have written the reason for delay. Only because of the reason that it is handwritten it could must be said that it was introduced later moreover the counsel for petitioner admits that he filed to carry out in the copy. The vehement argument of the respondent skill that court records is altered is unacceptable.

6. The trial Court, accepting the reasons stated in the affidavit, allowed the petition filed to condone the delay. Hence, the argument of the learned counsel for the revision petitioner that the petitioner therein/respondent herein has not stated sufficient reasons to condone the delay is not at

all acceptable. The trial Court has given sufficient reason for allowing the petition filed by the respondent herein for condoning the delay of 22 days. Hence, this Court is of the considered view that there is no infirmity or illegality in the order passed by the trial Court and this Court finds no reason to interfere with the order of the trial Court which does not warrant any interference by this Court and hence, the criminal revision case is liable to be dismissed.

7. In the result, this Criminal Revision Case is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

Jrl

To

1. The Judicial Magistrate Court No.II,
Erode.

2. Do Thro The Chief Judicial Magistrate
Erode.

1 cc to Mr.N.Manokaran, Advocate, sr.54534

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