

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 12.04.2016

Coram:

THE HON'BLE Mr.JUSTICE M.VENUGOPAL

CrI.R.C.No.400 of 2016 and
CrI.M.P.No.2760 of 2016

S.Kandasamy

..Petitioner

Vs.

P.Jaganathan

...Respondent

Prayer: Petition filed under Section 379 r/w 401 Cr.P.C., to call for the records relating to the Order dated 04.01.2016 made in C.M.P.No.665 of 2015 on the file of the learned Judicial Magistrate, Kangayam and set aside the same by allowing this Criminal Revision Petition

For Petitioner : Mr.D.Gopal

O R D E R

Heard the Learned Counsel for the Petitioner.

2.To avoid an avoidable delay, notice to the Respondent is dispensed with.

3. The Petitioner / Accused has preferred the instant Criminal Revision Case praying for passing of an Order by this Court in calling for the records relating to the Order dated 04.01.2016 in C.M.P.No.665 of 2015 passed by the Learned Judicial Magistrate, Kangayam.

4. According to the Learned Counsel for the Petitioner/ Accused, the Order passed by the Trial Court in C.M.P.No.665 of 2015 in allowing the Petition for condoning the delay of 7 days in preferring the complaint by the Complainant is against Law, weight of evidence and all probabilities of the case.

5. The Learned Counsel for the Petitioner takes a emphatic plea that the Order passed by the Trial Court in C.M.P.No.665 of 2015 dated 04.01.2016 is a non-speaking Order and as such, the Impugned order is unsustainable in Law.

6. At this stage, this Court has perused the contents of C.M.P.No.665 of 2015 filed by the Respondent / Complainant (Petitioner - before the Trial Court) and is of the considered view that the Respondent / Petitioner had categorically mentioned that the complaint ought to have been filed within

01.02.2014 and since the original cheque and memo in the case got mixed up with other papers relating to other transactions in his home etc., he was not in a position to file the complaint in time. In that process there had occasioned a delay of seven days in preferring the complaint.

7. The Revision Petitioner / Accused had filed a counter to C.M.P.No.665 of 2015 stating that there is no true in the Petition in C.M.P.No.665 of 2015 filed by the Respondent / Complainant and no justifiable reasons were assigned in regard to the condonation of 7 days delay in the subject matter in issue and therefore, the Petition is liable dismissed. In this connection, this Court has perused the Impugned Order of the Trial Court in C.M.P.No. 665 of 2015 dated 04.01.2016 and is of the considered view that the Trial Court in the Impugned Order among things had observed the following:-

"... Though it was objected to the effect that the allegations was denied by the respondent / accused to render substantial justice the delay of 7 days needs to be condoned. Hence the petition deserves to be allowed. In the result this petition is allowed. No cost."

8. The said order of condoning the delay of 7 days only with a view to render substantial justice cannot be raised as a plea by the Revision Petitioner before this Court because of the simple reason that the Trial Court at the time of passing the Impugned Order in C.M.P.No.665 of 2015 dated 04.01.2016 had exercised its discretion in a judicious manner and had allowed the Criminal Miscellaneous Petition. Although the said order appears to be cryptic one, yet it unerringly point out that the Learned Judicial Magistrate, Kangeyam had applied its judicial thinking mind and exercised its discretion in allowing the Petition. As such the said order is free from any flaw, as opined by this Court. Consequently, the Criminal Revision Case sans merits.

In fine, the Criminal Revision Case is dismissed and connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(AS)

//True Copy//

Sub Assistant Registrar

ssd

TO

1. The Judicial Magistrate, Kangayam.
 2. The Chief Judicial Magistrate, Erode District
 3. The Additional Public Prosecutor,
High Court, Madras.
- + 1 cc to Mr.D. Gopal & D. Raghu, Advocate Sr.22852

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SVI (CO)
Eu 27.4.16



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