

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.08.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.R.C.No.740 of 2016
and Crl.MP.No.5566 of 2016

Vijay Suresh

.. Petitioner/Petitioner

Vs.

Lakshmi.

.. Respondent/Respondent

Prayer :- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 19.02.2016 made in Crl.MP.No.453 of 2015 in MC.No.8 of 2013 passed by the Judicial Magistrate, Arni.

For Petitioner : Mr.A.Gandhi.

For Respondent : Mr.K.Govi Ganesan.

ORDER

The Criminal revision is directed against the order passed by the learned Judicial Magistrate, Arni made in Crl.MP.No.453 of 2015 in MC.No.8 of 2013 dated 19.02.2016, dismissing the application filed to condone the delay of 205 days in filing the application to set aside the exparte order dated 17.02.2014.

2.The revision petitioner is the petitioner in the Crl.MP.No.453 of 2015 and the respondent in Mc.No.8 of 2013.

3.The petitioner filed the condone delay petition to set aside the exparte order dated 17.02.2014. The main ground alleged in the petition was that the petitioner suffered from serious jaundice from 10.02.2014 and he was taking treatment at Wallajapettai, hence he is not able to appear before the Court and hence, the MC was allowed. When he came to the knowledge about the case, the revision petitioner immediately filed petition to set aside the exparte order dated 17.02.2014, with a delay of 205 days, the delay is neither wilful nor wanton. In the interest of justice, the learned counsel for the petitioner seeks one more opportunity to contest his case on merits and

prays to set aside the order of the trial Court by allowing the criminal revision petition.

4.The learned counsel for the respondent submitted that there is no reason has been mentioned to condone the delay of 205days. The trial Court after considering the facts and circumstances correctly dismissed the petition filed by the petitioner and there is no illegality or infirmity in the order of the trial Court and prays to dismiss the revision petition.

5.Heard the rival submissions made on both sides and perused the records.

6.On reading of the counter filed by the respondent in the trial Court in CrI.MP.No.453 of 2015 in MC.No.8 of 2014, it is stated that the petitioner filed this petition only to drag on the proceedings. The only reason stated by the petitioner is that he suffered from Jaundice, hence he is not able to appear before the Court on 17.02.2014, on that date exparte order was passed without stating any reason.

7.Even in the application, it is clearly stated by petitioner that the date on which he was affected with Jaundice i.e, on 10.02.2014. The petitioner has not stated in affidavit, when he was recovered from Jaundice, why he has not approached to set aside exparte order immediately. On his recovery from the disease, the petitioner received notice through Court on 27.08.2014, thereafter, the revision petitioner immediately approached his counsel and filed the condone delay petition with a delay of 205 days to set aside the exparte order dated 17.02.2014. Earlier, the respondent/wife has filed petition for recovery of maintenance awarded by the trial Court, the petitioner has also paid the arrears amount. The intention of the petitioner is to evade himself from paying the regular monthly maintenance and to drag on the proceedings, the present petition is filed to set aside the exparte order. There is no evidence or documents put forth on the side of the petitioner, except filing the affidavit before the Court, he has not come to the box to depose his case.

8.Considering the entire facts and circumstances of the case, the trial Court correctly dismissed the condone delay petition filed by the petitioner. This Court finds there is no illegality or infirmity in the order passed by the trial Court and the same does not warrant any interference by this Court.

9.In the result, the criminal revision stands dismissed.
Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To
The Judicial Magistrate, Arni.

1 cc to Mr.K.Govi Ganesan, Advocate, sr.49519
1 cc to Mr.A.Gandhi, Advocate, sr.49719

Cr1.R.C.No.740 of 2016

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