

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2016

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Cr1.R.C.No.994 of 2010

A.M.S.Ameenullah

...Petitioner/Accused

vs

S.Devarajan

...Respondent/Complainant

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order of the learned II Metropolitan Magistrate, Egmore, Chennai in M.P.No.1969 of 2009 dated 28.06.2010.

For Petitioner : Mr.S.Sarathchandran
for M/s.K.M.Vijayan Associates

For Respondent : No appearance

O R D E R

The present revision has been filed by the petitioner against the order condoning the delay of 114 days in filing the complaint under Section 138 of Negotiable Instrument Act

2. The petitioner is accused in the above private complaint. A private complaint has been filed by the respondent, on the ground that the petitioner has borrowed a sum of Rs.19,61,300/- on various dates and agreed to repay the amount in three installments. In order to discharge the first installment, the petitioner has given a cheque for Rs.5,00,000/- and when the same was deposited on 20.12.2015 to the drawee bank and the same was dishonored with remarks "insufficient fund". After completing the legal formalities, the respondent filed a private complaint on 13.06.2006, since there is a delay of 114 days in filing the complaint, he filed a petition under Section 142(b) of Negotiable Instrument Act, to condone the delay of 114 days in filing the complaint. The Court below allowed the application on payment of cost of Rs.1000/-. Now, challenging the above order, the petitioner/accused filed the

present revision.

3. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

4. The learned counsel appearing for the petitioner would submit that even though the complaint was filed in the month of June, 2006, the respondent/complainant did not appear before the Court from June, 2006 to July, 2009, for more than three years, and thereafter only he appeared, and the application was disposed of. Apart from that there is no sufficient reason has been shown for condoning the delay, the Court below mechanically allowed the application on payment of costs and he sought for allowing the criminal revision case.

5. The learned counsel appearing for the respondent would contend that even though the matter has been pending for three years due to some bonafide reasons, the respondent did not appear before the Court and he has also shown sufficient cost for the delay, considering the same, the Court below allowed the application. He further submit that once the Court below condoned the delay, there is no reason to interfere with the order passed by the Court below.

6. I have considered the rival submissions.

7. On perusal of the records it could be seen that even though the complaint has been filed in the month of June, 2006, the respondent/ complainant continuously absent for several hearings up to 27.07.2009 and only on 08.11.2009, he appeared before the Court, and then the condone delay petition is taken up for hearing, which clearly shows the lethargic attitude of the respondent/complainant in prosecuting the case. Apart from that the reason given in the affidavit filed in support of the condone delay petition, the respondent/complainant only stated that, during the renovation of his resident, the original documents were misplaced, hence, he could not filed the complaint within the limitation period. But, the respondent/complainant did not say, what are the documents were misplaced, and when he got the original documents, the averments contained in the affidavit are very vague and it cannot be considered sufficient reasons to condone the delay. The Court below without considering all the facts allowed the application. Hence, the order of the Court below is liable to be set aside.

8. In the result, this criminal revision case is allowed by setting aside the order passed by the learned II Metropolitan Magistrate, Egmore, Chennai, dated 28.06.2010 in M.P.No.1969 of 2009.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

rrg

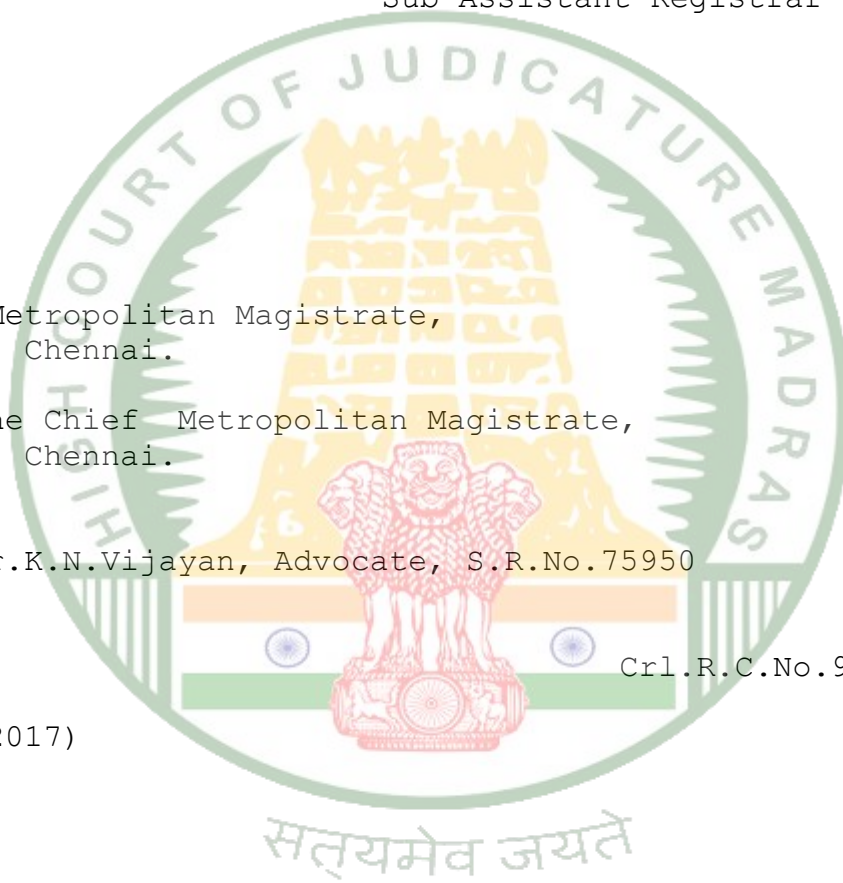
To

- 1.The II Metropolitan Magistrate,
Egmore, Chennai.
2. -do- The Chief Metropolitan Magistrate,
Egmore, Chennai.

+lcc to Mr.K.N.Vijayan, Advocate, S.R.No.75950

VGII (CO)
RS (13/06/2017)

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