



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.05.2016

CORAM

THE HONOURABLE MR. JUSTICE P.N. PRAKASH

Crl.R.C. (MD) No.283 of 2016

WEB COPY

R.Jeyalakshmi

.. Petitioner/Accused

Vs

S.Raihana

.. Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 397 and 401 Cr.P.C., to call for the records relating to the orders passed in Cr.M.P.No.4763 of 2015 in S.T.C.No.667 of 2014 dated 08.03.2016 on the file of the Judicial Magistrate No.I, Fast Track Court, No.1, Madurai in STC No.667 of 2014 and set aside the same.

For Petitioner : Mr.R.Srinivasan

Orders Reserved on : 29.04.2016**Pronounced on : 04.05.2016****O R D E R**

This petition has been filed to set aside the order passed in Cr.M.P.No.4763 of 2015 in S.T.C.No.667 of 2014 dated 08.03.2016 on the file of the Judicial Magistrate No.I, Fast Track Court, No.1, Madurai.

2. For the sake of convenience, the parties will be referred to as 'the complainant and accused'.

3. It is the case of the complainant that he runs a business in the name and style of Kuvaith Mattresses and that the accused is running a shop in the name and style of 'Tanishque Gift Shop' and that the accused obtained a total sum of Rs.10,50,000/- as loan from the complainant and in discharge of the liability, the accused gave two cheques for Rs.5 lakhs each to the complainant, out of which, the complainant presented the cheque No.141152 dated 16.05.2014 for collection and the same was dishonoured. The complainant gave a statutory notice on 01.07.2014 and thereafter lodged a private complaint against the accused before the Judicial Magistrate, NO.I, FTC No.1, Madurai for offence under Section 138 of the Negotiable Instruments Act. The accused filed Crl.O.P. (MD) No.10842 of 2015 for quashing the said complaint in STC No.667 of 2014 before this Court, on the ground that the private complaint was filed on 17.11.2014 with a delay and that the complainant had not filed any application for condonation of delay. This Court relied upon the decision of the Supreme Court in **Pawan Kumar Ralli v. Maninder Singh Narula** reported in **2015(1) LW (Crl) 231** and disposed of Crl.O.P. (MD) No.10842 of 2015 on 24.11.2015, wherein, in paragraph Nos.7 and 8, this Court has observed as follows:

"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."

4. Thereafter the complainant filed Crl.M.P.No.4763/2015 for condonation of delay and after hearing the complainant and the accused, the trial Court allowed the petition on 08.03.2016. Aggrieved by which, the accused is before this Court.

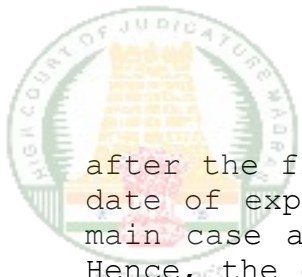
5. Heard the learned counsel for the accused.

6. The learned counsel for the accused submitted that the complainant had committed perjury by giving false particulars to the Court by contending that he had already filed the condonation application and only at the instance of the orders passed by the High Court, he had filed a second application for condonation of delay. If the 2nd application is to be considered, there is a delay of 493 days, but whereas, the complainant has stated that the delay is only 85 days and therefore, the trial Court should have dismissed the application for condonation of delay.

7. This Court gave anxious consideration to the submissions made by the learned counsel for the accused and also perused the typed set of papers filed by the petitioner.

8. It is the case of the complainant that initially, he had filed single complaint for two cheques and on the directions of the trial Court, he had filed two separate complaints for each cheque and that he filed the 2nd complaint with delay of 85 days along with an application for condonation of delay. The said application is available in the bundle as unnumbered. After the orders passed by the High Court in Crl.O.P.(MD) No.10842/2015 on 24.11.2015, the complainant felt that it was essential to file a fresh application in order to satisfy the directions of the High Court.

9. The fact remains that the private complaint was filed and was numbered as STC No.667/2014 and on the filing of it, the limitation period stops running. If a petition for condonation of delay is filed,



after the filing of the main case, the delay has to be computed from the date of expiry of the period of limitation to the date of filing of the main case and not to the date of filing of the condone delay petition. Hence, the contention of the learned counsel for the accused that there is a delay of 493 days cannot be countenanced. The learned counsel for the accused further contended that the complainant has not given satisfactory reasons for condonation of delay.

10. On a reading of the impugned order, it is seen that the complainant had stated that she was physically indisposed and on account of which, she was not able to file the complaint within time.

11. The trial Court has condoned the delay, after placing reliance upon the decision of the Supreme Court in **Pawan Kumar Ralli v. Maninder Singh Narula reported in 2015(1) LW (Cr1) 231**, wherein, the Supreme Court has stated that the Court should raise above technicalities. It is always open to the accused to defend his case in accordance with law before the trial Court and establish his innocence rather than raise his defence on technicalities like limitation.

12. In the result, this petition is devoid of merits and accordingly, the same is dismissed. Consequently connected Miscellaneous Petitions are also dismissed.

Sd/
Vacation Officer

/TRUE COPY/

Sub Assistant Registrar

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

Pre Delivery Order made in
Cr1.RC.(MD)No. 283 of 2016
04.05.2016

RR
PA/JGB-SS/13.05.2016/3P/2C