

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY
CRIMINAL REVISION CASE No.1412 OF 2013

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C. challenging the orders dated 04.06.2013 passed in Crl.M.P.No.843 of 2013 in Unregistered C.C. of 2013 in S.R.No.932 of 2013 on the file of the Court of the III Additional Judicial Magistrate of First Class, Kothagudem.

The learned counsel for the petitioner submitted that mere wrong quoting of provision of law by itself is not a valid ground to dismiss the petition without going into the merits of the main case. He further submitted that the petitioner has assigned reasons much less cogent and valid reasons for condonation of delay in filing the complaint.

Per contra, the learned counsel for the first respondent submitted that the petitioner has not assigned reasons much less cogent and valid reasons for delay in filing the complaint. Hence, it is not a fit case to allow the criminal revision.

As per the case of the petitioner, the first respondent borrowed an amount of Rs.5,00,000/- from the petitioner on 10.08.2011 for his family necessities and executed a promissory note agreeing to repay the same with interest at the rate of 24% per annum. The first respondent issued a cheque bearing No.043288, dated 08.10.2012 for Rs.5,00,000/- drawn on Vijaya Bank, Kothagudem Branch in favour of the petitioner. The petitioner presented the said cheque in Indian Overseas Bank, Kothagudem Branch on 27.12.2012 for collection and the same was dishonoured for want of sufficient funds. The petitioner got issued a legal notice dated 05.01.2013 directing the first respondent to pay the amount within 15 days, failing which, he will be constrained to approach the concerned Court. Having no other alternative, the petitioner filed a complaint under Section 200 Cr.P.C.

against the first respondent for the offences punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (for short, 'the N.I.Act') with delay of 5 days. Hence, the revision.

I have carefully perused the affidavit filed by the petitioner in support of the petition. It appears that by inadvertently the petitioner filed the petition under Section 149 of the N.I.Act instead of Section 142 of the N.I.Act. It is a settled principle of law that mere wrong quoting of provision of law by itself is not a valid ground to dismiss the petition. The Court can treat the said petition as filed under Section 142 of the N.I. Act and pass appropriate orders. The petitioner filed the petition with a request to condone the delay of 5 days in filing the complaint. Due to viral fever, the petitioner could not file the complaint within the stipulated period. The trial court made an observation that the delay is less than 5 days and not 5 days. While disposing of the petitions of this nature, the approach of the Court shall be pragmatic and not pedantic. The Court shall not insist for technicalities at the cost of the substantial justice. If the petition is dismissed, it may not be possible for the petitioner to ventilate his legitimate and legal grievances. Even if the petition is allowed, the same may not cause any prejudice to the rights of the first respondent. The petitioner has assigned reasons much less cogent and valid reasons for delay in filing the complaint.

Having regard to the facts and circumstances of the case, I am of the considered view that it is a fit case to allow the revision.

In the result, the Criminal Revision Case is allowed at the stage of admission and the order dated 04.06.2013 passed in CrI.M.P.No.843 of 2013 in Unregistered C.C. of 2013 in S.R.No.932 of 2013 on the file of the Court of the III Additional Judicial Magistrate of First Class, Kothagudem is hereby set aside. The trial Court is directed to number the complaint, if it is otherwise in order.

Consequently, Miscellaneous Petitions, if any, pending in this

Criminal Revision Case shall stand closed.

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T.SUNIL CHOWDARY, J

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Date: 22.04.2016

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