

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE NO.994 OF 2013

ORDER:

This Criminal Revision case by the petitioner- complainant under Sections 397 and 401 Cr.P.C. is directed against the order, dated 19-02-2013 in CrI.M.P.No.1684 of 2012 on the file of the Metropolitan Sessions Judge, Hyderabad, whereunder and whereby the petition filed under Section 5 of the Limitation Act, 1963 (for short 'the Act') to condone the delay of 520 days in preferring the appeal was dismissed.

2. Learned counsel appearing for the petitioner submitted that the learned Metropolitan Sessions Judge misconstrued the scope of Section 5 of the Act and dismissed the petition. He further submitted that the learned Sessions Judge has not considered that the petitioner could not file the appeal within the period of limitation due to ill-health.

3. On the other hand, learned counsel appearing for the 1st respondent submitted that the learned Sessions Judge has considered the material available on record in right perspective and dismissed the petition. He further submitted that the petitioner has not assigned any reasons, much less cogent and valid reasons and hence, the petition is liable to be dismissed.

4. Now the point for consideration is whether the petitioner has assigned cogent and valid reasons to condone the delay and whether there is any illegality or irregularity in the impugned order?

5. The petitioner herein filed a complaint against the 1st respondent herein for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act'). The XV Additional Judge-cum-XIX Additional Chief Metropolitan Magistrate, Hyderabad took the case on file under Section 138 of the N.I. Act.

6. After full-fledged trial, the trial Court arrived at a conclusion that the 1st respondent-accused is not guilty for the offence punishable under Section 138 of the N.I. Act and accordingly, acquitted him, vide order, dated 16-12-2009 in C.C.No.288 of 2009. Aggrieved thereby, the petitioner herein

preferred an appeal before this Court in Crl. Appeal No.146 of 2010. This Court dismissed the appeal on 13-04-2010 with the following observation:

“In the result, the appeal is dismissed giving liberty to the appellant to file appeal to the Sessions Court as against the impugned order of acquittal, in which event, the Sessions Court will have to deduct the time consumed by the appellant in pursuing this appeal before this Court while computing the period of limitation for the appeal that is going to be filed by the appellant before the Sessions Court. The Registry is directed to return the certified copy of the impugned judgment of acquittal to the appellant’s counsel.”

7. Thereafter, the petitioner filed Crl.M.P.No.1684 of 2013 before the Metropolitan Sessions Judge, Hyderabad to condone the delay of 520 days in preferring the appeal, which was dismissed vide impugned order. Hence, this revision.

8. The contention of the petitioner is that due to ill-health he could not file a petition within a period of limitation. As per the averments made in the petition, the petitioner could not move from the bed due to ill health. For one reason or the other, the petitioner did not choose to enter into the witness box to explain the reasons for delay. The petitioner herein filed Medical Certificate, dated 23-08-2012 to substantiate his stand. It is not mentioned in the Medical Certificate that how long the petitioner has taken treatment in the hospital. It is also not mentioned in the Medical Certificate that he was on bed for a period of 520 days. The petitioner did not choose to examine the doctor, who issued the Medical Certificate. It is not uncommon to file this type of Medical Certificate in order to overcome the laches on the part of the petitioner. It is needless to say that the petitioner has to explain each and every day’s delay. I am fully agreeing with the proposition that while deciding the petitions of this nature, the approach of this Court shall be pragmatic, but not pedantic. That does not mean the Court shall allow the petitions filed under Section 5 of the Act in a routine manner without proper scrutiny. If really, the petitioner was on bed for such a long period, certainly he might have examined the doctor who treated him. The petitioner has not assigned any reasons much less cogent and valid reasons to condone the abnormal delay of 520 days in filing the appeal. The learned Sessions Judge after considering the material on record, rightly dismissed the petition. There is no infirmity or legal flaw in the order which warrants

interference of this Court. Viewed from any angle, the petition is not maintainable.

9. Accordingly, the Criminal Revision Case is dismissed. Miscellaneous petitions, if any pending in this criminal revision case, shall stand closed.

T.SUNIL CHOWDARY, J

DATED: 08.03.2016.

Hsd