

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2017

Coram

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

CRL.RC. No.1023 of 2017

and

Crl. MP.Nos.9645 and 9646 of 2017

1.E.Mani

2.M.Baby

3.M.Dinesh

... Petitioners

Vs.

Mr.R.P.S.Ponraaj

... Respondent

Prayer: The Criminal Revision Case has been filed under Section 397 read with 401 of the Code of Criminal Procedure praying to set aside the order dated 19.07.2017 made in Crl.M.P.No.965 of 2017 in unnumbered C.C. of 2017 of the file of the learned Judicial Magistrate, Tambaram, Chennai and allow the criminal revision petition.

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For Petitioners

:

Dr.Fr.Xavier Arulraj
Senior Counsel

ORDER

This Criminal Revision Case has been filed against the order passed by the learned Judicial Magistrate, at Tambaram, Chennai in Crl.M.P.No.965 of 2017 by order dated 19.07.2017.

2. By the said order, the learned Magistrate has allowed the petition filed by the respondent, under section 142 of the Negotiable Instrument Act, (in short, "N.I.Act") to condone the delay of 62 days in filing the complaint under section 138 of the N.I.Act.

3. The Brief facts of the case is that the respondent herein, having suffered with dis-honour of cheque, issued by the petitioners, had approached the Court below, by filing the complaint under section 138 of Negotiable Instrument Act, to take cognizance of the offence and try the same.

4. Statutorily, the said complaint should have been filed within 30 days from the date of cause of action arises under clause (c) of the proviso to section 138. However, according to the respondent, he did not file the said petition within such time of 30 days, as he could not contact his counsel, because of health reason. He was able to contact

the counsel only recently. In the mean while, there was a delay of 62 days in filing the said complaint. Accordingly, the said petition was filed to condone the delay of 62 days in filing the complaint.

5. In the said petition, after hearing the petitioner as well as the respondent i.e. Complainant and accused person, the learned Magistrate has allowed the same by condoning the delay of 62 days in filing the complaint. Aggrieved by the said order, the present revision has been filed.

6. Dr.Fr.Xavier Arul Raj, learned Senior Counsel appearing for the petitioner would submit that, though under proviso to Section 142(1) of the Act, power is vested with the Magistrate to condone the delay, such exercising of power to condone the delay must have been made by the Magistrate only on satisfactory reasons with acceptable documents / materials. सत्यमेव जयते

7. In this regard, the learned Senior Counsel would submit that, even according to the respondent, as seen from his own affidavit, he fell ill and was bedridden and that was the reason for the delay of 62 days. Therefore, he could not contact his counsel to give instructions

to file a complaint and only after recovery from illness, he contacted him and therefore, there was a delay of 62 days in filing the complaint.

8. By quoting the said reason given by the respondent for the delay, the learned Senior Counsel would submit that in support of the health reason, as averred in the affidavit, the respondent has not produced any document or certificate, from the Hospital / Doctor that he fell ill for two months and without even verifying or even warranting to produce such documents and satisfying himself as to whether the complainant really fell ill, the learned Magistrate, invoking the power vested in him under section 142 (1) proviso of the Act has allowed the present petition, which according to the learned senior counsel for the petitioner is unsustainable.

9. In support of the said contention, the learned Senior Counsel would rely upon the following two judgments. The first judgment he relied is the judgment of **Patna High Court, in the matter of *Jairam Sharma & Anr Vs State of Bihar* another** in Criminal M.P.No.20828 of 2007, dated 06.07.2009. The learned Senior Counsel would also rely upon a judgment of **Jharkhand High Court, made in the matter of *Ghazi Mohammed Masud Alam & another Vs.***

State of Jharkhand and others in W.P.(Criminal) No.272 of 2002, dated 18.06.2012.

10. By citing the two decisions, the learned Senior Counsel would urge that the order passed by the learned Magistrate, simply allowing the petition to condone the delay of 62 days without any satisfying reason, by invoking the power under section 142 (1) proviso under the N.I. Act, is liable to be interfered with.

11. I have considered the said submissions made by the learned Senior Counsel and also have perused the material placed before me as well as the two judgments cited by the learned Senior Counsel.

12. Insofar as the judgment of Patna High Court is concerned, the issued raised before the said Court was, whether the accused is entitled to be heard before deciding the petition to condone the delay in filing the complaint under section 142 of the N.I.Act. Only in that context, it was held by the said High Court that the accused shall also be heard before deciding the condone delay petition under 142 of the N.I. Act. The relevant paragraphs are extracted hereunder:

"Shorn of all the details the only question to be decided in this case is whether the accused-petitioners should be heard if the complaint is filed beyond the time prescribed for filing the complaint under section 142(b) of the Negotiable Instruments Act (the Act; hereinafter). Section 142 of the Act reads as follows:

On a plain reading of proviso to section 142 of the Act it would appear that it is an enabling insertion to the section which prescribes that the court has to be satisfied that there was sufficient cause in not making the complaint within the time prescribed and the complaint would not be entertained if the complaint is not able to satisfy the court that he had good reasons for not filing the complaint petition within the time prescribed by the provision to section 142 of the act. Admittedly in the case the delay is of one month. Learned Magistrate has simply condoned the delay without disclosing his mind or even mentioning the reasons put forth on behalf of the complainant to justify the delay. Undoubtedly a right had accrued in favour of the petitioners when there was a delay in lodging the complaint. Section 142(b) of the act has to be read along with section 142(a) which starts with nonobstant clause that "no court shall take cognizable of any offence under section 138 except

upon a complaint in writing made by the payee or, as the case may be, holder in due course of the cheque. "Clause (b) provides that such complaint shall be made within one month from the date on which cause of action arises under clause (c) of the proviso to section 142(c). Therefore, when there is a delay in filing the complaint, the other side ought to be heard to refute the factum of delay even though there is no such provision in the section itself, before the court can taken cognizance for the offence.

Learned counsel for the opposite party relying on a Supreme Court judgment in the case of Chandra Deo Singh vs. Prakash Chandra Bose @ Chabi Bose & Another, AIR 1963 SC 1430 submits that an accused in a case does have any locus to appear at the time of taking cognizance and as such the petitioners cannot claim that they ought to have been heard by the Magistrate on the date on which he passed the order taking cognizable of the offence under section 138 of the Act. The principles laid down in the case of Chandra Deo Singh (supra) have been later reiterated in several judgments of the High Courts and the Supreme Court. However, the facts and circumstances in those cases are different to the facts of the present case. The N.I. Act is separate code which deals with the

offences relating to promissory notes, Bill of exchange and cheques. Before the amendment of section 142 by Act 55 of 2002 there was no provision for condoning the delay in filing a complaint under section 138 of the Act and obviously due to nonobstant clause there was a bar in taking cognizable if the complaint was filed beyond the time provided. The introduction of the proviso to section 142 gave the court power to consider the reasons for the delay in filing the complaint and the use of the term "satisfies" necessarily means that the complaint would only be considered after sufficient reasons were made out for condoning the delay.

In the present case apart from the fact no reasons have been made out for condoning the delay. The court ought to have given an opportunity to the complainant to be heard only on the point of delay for the reasons I have already explained in this order. In the circumstances the order taking cognizance is quashed on both the grounds mentioned aforesaid."

13. Therefore the aforesaid facts would clearly disclose that the issue raised before the said High Court was, as to whether, the accused is entitled to be heard in a petition to condone the delay filed

under section 142 of the N.I.Act. Only on the said facts and circumstances of the case it was held that petition to condone the delay ought not to have been decided without hearing the accused person.

14. In so far as the second decision cited by the learned Senior Counsel is concerned, the issue placed before the Jharkhand High Court, was also in respect of the case under N.I.Act. However, the fact remains that in that case, after dis-honour of cheque, notice was issued by the complainant on 23.06.2001, which was received by the accused on 30.03.2001. Thereafter the complaint was filed on 28.11.2001, admittedly, beyond the 30 days period i.e. beyond the statutory limitation period under the N.I.Act. It was happened prior to the amendment, which came into being only from 06.02.2003, as by the said amendment only the proviso 142(i)(b) was inserted, whereby, it enabled the complainant to move a condone delay petition before filing the complaint, under section 138 N.I.Act, if there is any delay occurred beyond the 30 days statutory limitation period. Since, the said complaint, in the case referred before the Jarkhand High Court was filed on 28.11.2001, i.e. much before the amendment came into being, certainly beyond 30 days of limitation period, the Court had

taken a view that the said complaint was certainly beyond the limitation and therefore, on that ground it was decided.

15. Therefore, both cases cited by the learned senior counsel, on facts, are different and distinguishable and do not apply to the facts of the present case. Therefore, the same may not be applied. Hence those two decisions are in no way helpful to the petitioner.

16. Moreover, on merits also since the delay was 62 days, this Court feels that it is not a huge delay. Moreover, even for the 62 days, health reason has been adduced by the complainant in his affidavit filed support of the condone delay petition, and only on considering the same, the learned Magistrate, has allowed the petition. Merely because the learned Magistrate has failed to mention that because of health reason, the complainant could not contact his counsel, it cannot be a ground to attack the said order and it cannot be said the entire order is vitiated. Therefore, this Court is of the considered view that absolutely there is no infirmity in the impugned order and accordingly, the same is not only justifiable, but also sustainable one.

17. Hence, the Revision fails and accordingly it is dismissed.

18. However, it is represented by the learned Senior Counsel appearing for the petitioner that, as per the instructions of the petitioners, they are ready and willing to settle the matter provided the same is referred to the Mediation Centre/Lok-Adalt.

19. Since offence under section 138 N.I.Act is compoundable in nature, it is open to the petitioner, to make necessary application before the trial court, to refer the matter to Lok-adlat/Mediation Centre for settlement and if any such application is moved by the petitioner, the learned Magistrate shall consider the same and if convincing reasons are there to conclude that the matter can be settled if it is referred to the Mediation / Lok-adalt, than the learned Magistrate shall pass appropriate orders to that effect before re-coursing to the regular mode of trial. With these observations, the Criminal Revision case is dismissed.

20. The learned Senior Counsel for the petitioner would also submit that the second petitioner being an old lady, her presence in the court below for future hearing may be dispensed with. Even for the said relief, it is upto the petitioner to file an appropriate petition before the trial Court and it shall also be considered by the learned

R.SURESH KUMAR, J.

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Magistrate, considering, the age factor of the second petitioner and pass an appropriate order immediately.

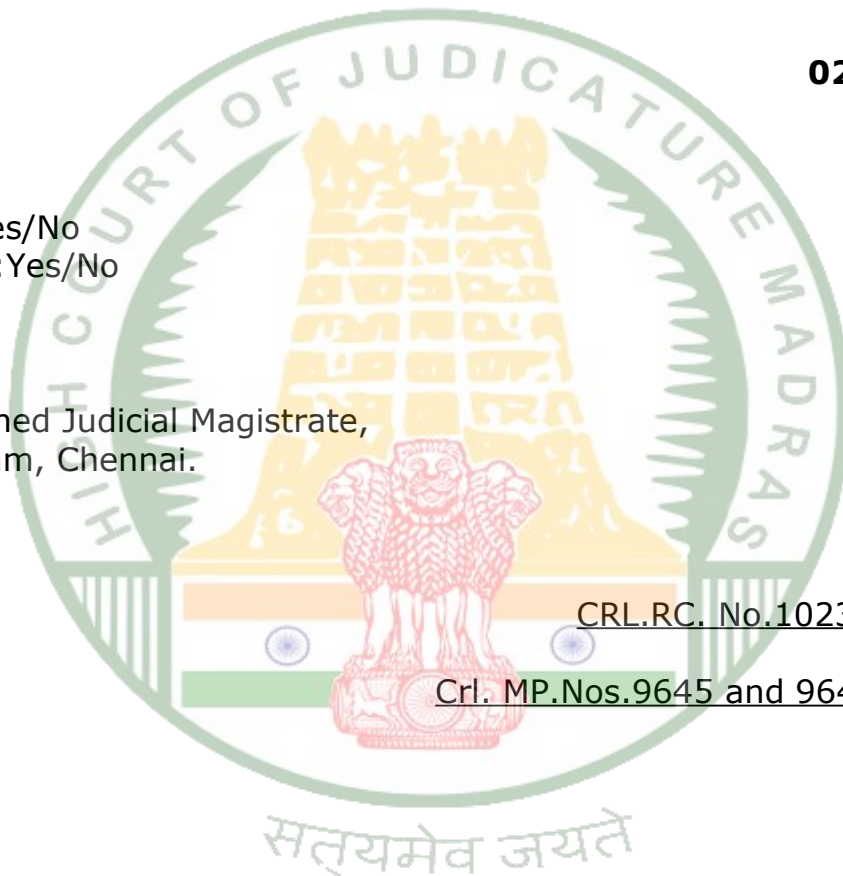
02.08.2017

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Index:Yes/No
Internet:Yes/No

To

The learned Judicial Magistrate,
Tambaram, Chennai.



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