

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2017

CORAM

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

CrI.R.C.No.851 of 2017

Jacquelin Mary

... Petitioner/Complainant

Vs.

Mr.C.Ravikumar

... Respondent/Accused

Criminal Revision filed under Sections 397 read with 401 Cr.P.C. against the order of dismissal of the condone delay petition in filing the complaint under Section 138 of the Negotiable Instruments Act, passed by the learned District Munsif -cum- Judicial Magistrate, Thirukkazhukundram, in CMP.No.3320 of 2016 dated 13.04.2017.

For Petitioner : Mr.A.Venkatesan

ORDER

This revision case has been filed against the order passed by the learned District Munsif -cum- Judicial Magistrate, Thirukkazhukundram, in CMP.No.3320 of 2016 dated 13.04.2017.

The short facts which are required to be noticed for disposal of this revision case are as follows:

2.The petitioner had filed a complaint under Section 138 of the Negotiable Instruments Act, before the trial Court on 26.05.2016. The said complaint had been returned on 31.05.2016 for rectification of certain defects. After rectification, the said complaint was resubmitted on 10.08.2016. In the meanwhile, there was a delay of 89 days in presenting the complaint. In order to condone the said delay, CMP.No.3320 of 2016 was filed before the trial Court, which has been dismissed through the impugned order, against which, the present revision has been filed.

3.Mr.A.Venkatesan, learned counsel appearing for the petitioner would state that the delay in filing the complaint before the trial Court was only 11 days and not 89 days. He would also state that the cheque issued by the respondent was dishonoured on 17.03.2016. Pursuant to which, he had sent a notice to the respondent on 28.03.2016 and 15 days time given

after sending notice was over by 11.04.2016 and therefore, from that day 30 days limitation period was also over only on 12.05.2016. However, the complaint was filed on 26.05.2016. Therefore, there can be no delay of 89 days. However, by resubmitting the case papers, after complying with certain defects pointed out by the trial Court, the learned counsel appearing for the complainant had wrongly filed a petition as if there was a delay of 89 days and therefore, the said petition was filed which, after having been considered by the trial Court, has been rejected through the impugned order. Therefore, the said reasoning given in the order impugned is not a justifiable one. Hence, the learned counsel appearing for the petitioner seeks indulgence of this Court by exercising its revisional power.

4. Though notice has been served on the respondent, he did not enter appearance either in person or through pleader.

5. I have considered the submissions made by the learned counsel appearing for the petitioner and also, I have gone through the materials placed before this Court for perusal.

6. As has been stated by the learned counsel appearing for the petitioner, actually, the complaint was filed on 26.05.2016, since the trial Court seal affixed on the complaint shows that it has been received on 26.05.2016. Thereafter, on preliminary scrutiny, the complaint was returned by the trial Court on 31.05.2016, as the original documents were not enclosed.

7. After taking the returned case papers, it should have been resubmitted/represented within the time. However, in the meanwhile, it seems that the counsel for the complainant was changed and a new counsel was appointed and in the meanwhile, the petitioner has also fallen sick and therefore, he took some time to resubmit the case papers and accordingly, it was resubmitted on 10.08.2016.

8. The learned counsel, who appeared for the complainant before the trial Court, had filed a petition to condone the delay of 89 days, but, instead of mentioning as delay in resubmitting/representing, it has been mentioned as delay in filing. Moreover, even for the said delay of 89 days, Medical Certificate had been produced by the complainant. However, as the delay was calculated for 11 days and the very same Medical reason has been given, by refusing to accept the Medical Certificate produced by the petitioner, the learned Judge has rejected the petition to condone the delay.

9. If at all, 30 days limitation period was over as on 12.05.2016, the delay would start from the next date. The

complaint was filed on 26.05.2016, as evidenced from the Court seal affixed in the copy of the complaint, therefore, the delay was only 14 days. However, it was initially calculated as 11 days and subsequently, calculated as 89 days.

10.If the actual delay is 14 days, for which, medical reason had been given, there can be no quarrel on that issue to accept the same. However, subsequently, since the petitioner himself had filed a petition stating that there is a delay of 89 days and therefore, the learned Judge refused to accept the Medical Certificate produced by the petitioner/complainant.

11.In view of the provision available in the Negotiable Instruments Act, by subsequent amendment, if sufficient reason is given for delay, the same can be condoned.

12.Here in the case on hand, from the dates and particulars supplied by the parties, as has been recorded in the impugned order, the delay must be only 14 days, if at all, there is any longer delay of 89 days, it must be only in the process of resubmitting/representing the complaint.

13.At any rate, since the medical reasons have been given for which, Medical Certificate has also been produced before the trial Court, this Court is of the view that, the trial Court ought to have accepted the same, and dismissing the complaint on the ground of delay, under Section 138 of the Negotiable Instruments Act, would greatly prejudice the right of the complainant. Hence, this Court is of the considered view that this revision case is to be entertained and the order impugned is liable to be interfered with.

In the result, the impugned order is set aside and this Criminal Revision Case is allowed. The trial Court is directed to take the complaint on file and proceed the matter in accordance with law.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

mps

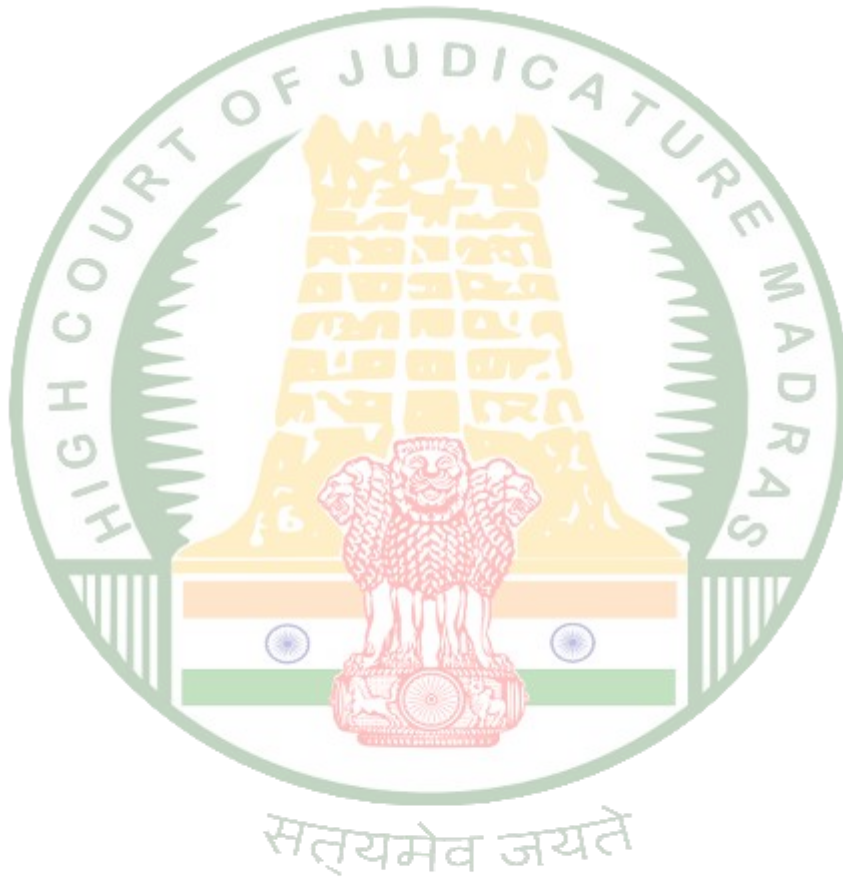
To

1.The District Munsif -cum- Judicial Magistrate,
Thirukkazhukundram.

2.do- The Chief Judicial Magistrate,
Chengalpattu.

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VGII (CO)
NR 09/11/2017



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