

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2017

(Orders reserved on 13.07.2017)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.1405 of 2011

Nruthya Gopal Petitioner/Accused

.. Vs ..

Anil Kumar Verma Respondent/Complainant

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C., to set aside the order dated 29.07.2011 passed by the learned II Metropolitan Magistrate, Egmore, Chennai, in Crl.M.P.No.673 of 2011 and allow this petition.

For Petitioner : Mr.D.Nagesh Babu
for Mr.R.Subramanian

For Respondent : No Appearance

ORDER

This Criminal Revision Case is filed under Sections 397 and 401 of Cr.P.C., to set aside the order dated 29.07.2011 passed by the learned II Metropolitan Magistrate, Egmore, Chennai, in Crl.M.P.No.673 of 2011.

2. The respondent is complainant before the trial Court and he has filed a complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the Act), along with a petition to condone the delay of 297 days in filing the complaint and the same was allowed by the learned II Metropolitan Magistrate, Egmore, Chennai. As against the said order, the present criminal revision case is preferred by the revision petitioner/accused.

3. The summary of facts leading to the filing of the above revision are as follows:-

(i) The respondent herein/complainant has filed a petition in Crl.M.P.No.673 of 2011 to condone the delay of 297 days in filing the complaint under Section 138 of the Act against the revision petitioner herein/accused.

(ii) The respondent herein/complainant stated that he has deposited a cheque alleged to have been given by the petitioner on 12.05.2010 and on bouncing, the respondent herein issued a statutory notice on 25.05.2010, for which, the revision petitioner has sent a reply on 21.06.2010 stating that there is no liability towards the cheque and denied the various allegations contained in the notice. Thereafter, it seems that the respondent has proceeded to once again present the cheque on 20.10.2011 and on its return, he has sent another legal notice dated 09.11.2010 under the provisions of the Negotiable Instruments Act, by suppressing the earlier facts and issuance of statutory notice dated 12.05.2010. It seems that the respondent herein has preferred a complaint on 21.10.2010 under Section 190(1)(a) of Cr.P.C. for the alleged offences under Sections 406 and 420 r/w. 341 and 506(ii) IPC before the learned Chief Metropolitan Magistrate, Egmore, Chennai, praying for a direction to investigate the case under Section 156 (3) of Cr.P.C. by the Deputy Commissioner of Police, Central Crime Branch, Egmore, Chennai, in which, the revision petitioner has filed counter. Thereafter, the learned Chief Metropolitan Magistrate, Egmore, Chennai, has returned the complaint stating that the complaint preferred by the respondent is purely civil in nature by its adjudication order dated 15.11.2010.

(iii) Again, the respondent herein appears to have moved the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, and filed a petition under Section 190(1)(a) of Cr.P.C. for the alleged offences under Sections 406 and 420 r/w. 341 and 506(ii) of IPC in respect of the second bouncing of the cheque. In the above backgrounds, the revision petitioner herein has moved a petition for anticipatory bail before the learned Principal Sessions Judge, City Civil Court, Chennai, wherein, he was granted anticipatory bail. Subsequently, the case has been closed by the Inspector of Police, CCB Branch as civil in nature. Thereafter, the respondent herein moved a petition in CrI.M.P.No.182 of 2011 on 29.12.2010 to condone the delay of 2 days in filing the complaint under Section 138 of the Act based upon the second dishonour of the same cheque issued under the second notice dated 09.11.2010, wherein, the revision petitioner has filed counter. Thereafter, the respondent has withdrew the complaint and the same was dismissed as withdrawn on 02.05.2011. Thereafter, the respondent herein filed another petition in CrI.M.P.No.673 of 2011 for condoning the delay of 297 days in preferring the complaint under Section 138 of the Act for the first cause of action notice dated 12.05.2010. The petitioner has filed counter and the learned II Metropolitan Magistrate, Egmore, Chennai, has allowed the said CrI.M.P.No.673 of 2011 and condoned the delay and taken cognizance of the case and hence, aggrieved against the condonation of delay of 297 days in filing the complaint under Section 138 of the Act in respect of the first cause of action

notice dated 12.05.2010, the revision petitioner/accused has preferred this criminal revision.

4. Learned counsel appearing for the revision petitioner contended that the trial Court is erred in not appreciating the facts and the documents filed by the petitioner and allowed the condonation of delay petition contrary to the principles laid down by the Hon'ble Supreme Court reported in 1998 (3) Crimes 217 [Sadanandan Bhadrar Vs. Madhavan Sunil Kumar] and the judgment reported in 2005 SCC (Criminal) [Prem Chand Vijay Kumar Vs. Yashpal Singh]. It is further contended that the trial Court has failed to see the earlier petitions and order before allowing the condonation of delay petition and hence, the learned counsel seeks to set aside the order passed by the trial Court.

5. Despite several notice, the respondent has not entered appearance and hence, service on the respondent was ordered to be served by substituted service. Paper publication was effected. Proof of service has been filed. Name of the respondent herein is printed in the cause list. None appears for the respondent.

6. This Court heard the submissions made by the learned counsel for the petitioner and perused the records.

7. Admittedly, the cheque in question viz., Cheque No.136040, dated 12.05.2010, drawn on Standard Chartered Bank, No.19, Rajaji Salai, Chennai, for a sum of Rs.3,28,27,063/- is said to have been issued by the revision petitioner herein. According to the revision petitioner, at the first instance of dishonour of the cheque, legal notice was issued on 25.05.2010 and reply was issued on 21.06.2010. Thereafter, without prosecuting under Section 138 of the Act, the respondent herein has preferred the first private complaint certain alleged offence under IPC before the learned Chief Metropolitan Magistrate Court, Egmore, Chennai, on 21.10.2010 and when the matter is pending before the Court, the respondent had issued a second statutory notice dated 09.11.2010 based upon the second bouncing of the cheque under Section 138 of the Act. Even at that stage, the respondent has not chosen to proceed under the Negotiable Instruments Act, however, moved the second private complaint for the very same cause of action before the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, on 12.01.2011. Thereafter, only on 29.12.2011, the respondent herein has filed a petition to condone the delay of 2 days in filing the complaint under Section 138 of the Act and in the said case, counter has been filed on 18.03.2011.

8. At this juncture, it is seen from the records that the complainant has filed a memo before the learned II Metropolitan Magistrate, Egmore, Chennai, stating that he has filed the above Crl.M.P.No.182 of 2010 to condone the delay of

2 days in preferring the complaint under Section 138 of the Act and however, after perusing the counter, the complainant came to understand that some errors have been crept in in detailing the facts leading to the filing of the complaint under the Negotiable Instruments Act and accordingly, sought permission of the Court to withdraw the complaint with liberty to file a fresh complaint and the same was ordered on 02.05.2011. Thereafter, CrI.M.P.No.673 of 2011 was filed under Section 142 of the Act to condone the delay of 297 days in filing the complaint calculating the days from the first legal notice issued for dishonour of the cheque in issue. The reason assigned for the delay is on medical grounds. The revision petitioner also filed counter.

9. The short points that needs to be addressed are;

(a) Whether the complaint instituted by the complainant before the trial court is proper? and

(b) Whether the trial Court is correct in condoning the delay?.

10. The admitted factual matrix of the case are that the cheque in issue is dated 12.05.2010 and on its presentation, the same was dishonoured on 14.05.2010 and statutory notice was issued on 25.05.2010, for which, the accused had sent a reply on 10.06.2010. Though the complainant has subsequently re-presented the said cheque and which was again dishonoured, however, the present complaint under Section 200 of Cr.P.C. is filed on 03.05.2011 to condone the delay of 297 days, only based on the first dishonour of the cheque viz., 14.05.2010,

11. During the course of arguments, reference was made to the case of *Sadanandan Bhadran v. Madhavi Sunil Kumar* reported in 1998(3) Crimes 217 and *Prem Chand Vijay Kumar V. Yashpal Singh* and Another reported in 2005 SCC (Criminal) 1153. In both the aforesaid cases, the Hon'ble Apex Court has held that a cheque can be presented by the buyer any number of times during its validity but cause of action arises to him to prosecute the drawer of the cheque only once. It is further held in the aforesaid two cases by the Hon'ble Apex Court that once the notice under Section 138 of the Act, is given to the drawer and the complainant failed to file the criminal complaint, he cannot maintain a complaint by presenting the cheque again with the Bankers and by serving the drawer with fresh notice.

12. In para 8 of *Sadanandan Bhadran* case (cited supra), the Hon'ble Apex Court has observed as under:-

"Besides the language of Sections 138 and 142 which clearly postulates only one cause of action there are other formidable impediments which negates the concept of successive causes of action. One of them is that for dishonour of one cheque there can be only one offence and such offence is committed by the drawer immediately on

his failure to make the payment within fifteen days of the receipt of the notice served in accordance with Clause (b) of the proviso to Section 138. That necessarily means that for similar failure after service of fresh notice on subsequent dishonour the drawer cannot be liable for any offence nor can the first offence be treated as non est so as to give the payee a right to file a complaint treating the second offence as the first one. At that stage it will not be a question of waiver of the right of the payee to prosecute the drawer but of absolution of the drawer of an offence, which stands already committed by him and which cannot be committed by him again."

13. After going through the above cited judgments of the Hon'ble Apex Court, since the present complaint is instituted only based upon the dishonour of cheque dated 14.05.2010 and statutory notice issued on 25.05.2010, however, with a delay of 297 days, this Court is of the considered view that the complaint has been properly instituted, however, with a delay which is discussed infra. As per the averment in the complaint, statutory notice was issued on 25.05.2010 calling upon the revision petitioner herein to pay the amount within 15 days of the receipt of the notice and the complaint has been filed on 03.05.2011. As mentioned in the previous paragraph, the earlier complaint has been filed against the very same accused in respect of the very same cheque based upon the second return which was withdrawn with liberty to file a fresh complaint and the same was allowed by the learned Magistrate.

14. Coming to the point of delay in filing the complaint viz., 297 days of delay, it has to be stated that the period of one month for filing the complaint will be reckoned from the date on which 15 days period from the date of the receipt of the notice by the drawer, expires. In the instant case, the complaint was filed on 03.05.2011 and hence, there is a delay of 297 days and therefore, CrI.M.P.No.673 of 2011 has been filed to condone the said delay under Section 142 of the Act.

15. It is to be stated that the proviso to sub Section (b) of Section 142 of the Act was inserted with effect from 06.02.2003 in which, the provision of condonation of delay was ordered. In the instant case, the complainant was entitled to file the complaint within 30 days, however, he has preferred the complaint with a delay of 297 days on the ground of "poor health conditions, the petitioner was unable to conduct his client immediately". Thus, before taking cognizance of an offence under Section 138 of the Act, a duty is cast upon the Magistrate to find out as to whether the complaint is filed within the period of limitation provided under Section 142 (1)

(b) r/w. Section 138 (c) of the Act and if the complaint is not within the period of limitation provided therein, whether the complainant has made out "sufficient cause" for condoning the delay has to be examined.

16. In the instant case, the complainant has simply stated that due to his "poor health conditions, he was unable to conduct his counsel immediately." However, from the typed set of papers filed by the revision petitioner, it is seen that the complainant is actively invoking the jurisdiction of the Code of Criminal Procedure under various provisions of law. At the first instance, he has filed the private complaint on 21.10.2010 under Sections 190(1)(a) of Cr.P.C. for the alleged offences under Sections 406 and 420 r/w. 341 and 506 (ii) IPC before the learned Chief Metropolitan Magistrate, Egmore, Chennai and again, he has also filed another private complaint with respect of the very same cheque for the alleged offences under Sections 406 and 420 r/w. 341 and 506(ii) IPC before the learned Additional Chief Metropolitan Magistrate, Egmore, Chennai, and again, he has moved the present Magistrate under Section 138 of the Act based upon the second dishonour of the cheque, subsequently, withdrawn and presented the present complaint. Besides in support of his averments for the delay of 297 days on the ground of poor health conditions, he has not filed any medical certificate to substantiate the said plea of his poor health conditions assumes significance. However, the learned Magistrate without taking the relevant provisions of law and also the fact that the plea is general in nature not supported by any medical evidence especially, for the delay of 297 days as alleged by the petitioner, this Court is of the view that the trial Court has committed an error in condoning the delay without applying its mind to the facts and circumstances of the case.

17. As stated supra, proviso to Section 142(1) (b) of the Act specifically mentioned that the complainant has to satisfy the Court that he had sufficient cause "for not making the complaint within the prescribed time." When the complainant has no satisfactory reason as well as to offer for the delay in filing the complaint, the trial Court is erred in condoning the delay of 297 days and hence, the order of the trial Court warrants interference by this Court.

18. Hence, for the reasons in the preceding paragraphs, this Court is of the considered view that the trial Court has committed an error in condoning the delay of 297 days without any sufficient cause being established by the complainant for the plea of poor health conditions coupled with the fact that the complainant was actively moving the criminal Court on various directions in respect of the very same claim goes against the complainant and hence, this revision has to be allowed.

19. In the result, this Criminal Revision Case is allowed and the impugned order dated 29.07.2011 condoning the delay of 297 days passed by the learned II Metropolitan Magistrate, Egmore, Chennai, in Cr1.M.P.No.673 of 2011 is set aside.

-s/d-
Assistant Registrar(CS-VIII)

True Copy

Sub-Assistant Registrar

Jr1

To

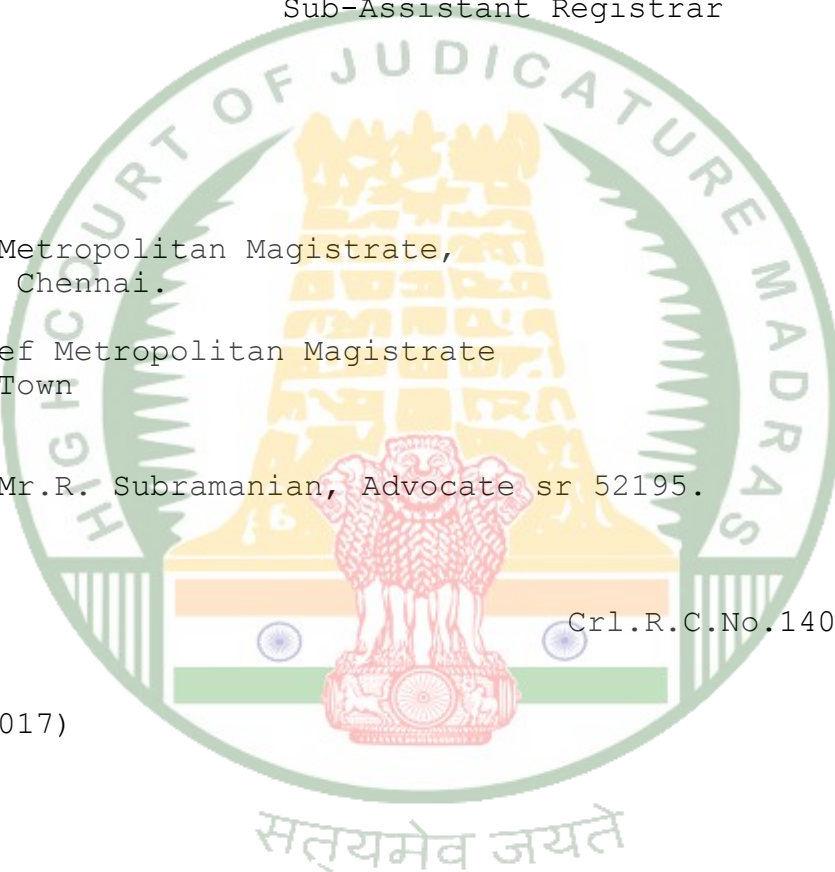
1. The II Metropolitan Magistrate,
Egmore, Chennai.

2. The Chief Metropolitan Magistrate
George Town
Chennai

+2 Ccs to Mr.R. Subramanian, Advocate sr 52195.

Cr1.R.C.No.1405 of 2011

RSI(CO)
sp(09/08/2017)



WEB COPY