



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10 .05.2017

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE A.M.BASHEER AHAMED

Cr1.RC(MD)No.552 of 2016

[Orders Reserved on 09.03.2017]

M/s.Roots Wellness Pvt Ltd.,
Through its Director Yash Saran
Chennai.

: Petitioner / Accused

Vs.

S.Viswanathan

: Respondent / Complainant

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records in Cr.M.P.No.205 of 2016 and in M.P.No.1972 of 2016 in C.C.No.210 of 2016 on the file of the learned Fast Track Magistrate Level, Tuticorin, Tuticorin District and set aside the order of the trial Court, dated 26.05.2016, to take the petition on file and to proceed further in accordance with the Criminal Procedure Code and allow the above criminal revision.

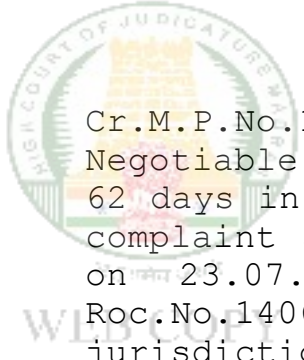
For Petitioner : Mr.K.A.Ramakrishnan

For Respondent : Mr.B.Rajesh Saravanan

ORDER

The present Revision is filed by the Petitioner praying to call for the records in Cr.M.P.No.205 of 2016 and in M.P.No.1972 of 2016 in C.C.No.210 of 2016, on the file of the Fast Track Magistrate Level, Tuticorin, Tuticorin District and set aside the order of the trial Court, dated 26.05.2016, to take the petition on file and to proceed further in accordance with the Criminal Procedure Code and allow the above Criminal Revision.

2. The respondent herein has filed a complaint under Section 138 of Negotiable Instruments Act originally before the XXIII Metropolitan Magistrate / Fast Track Court No.1, Saidapet, Chennai, against the petitioner. The respondent filed



Cr.M.P.No.1827 of 2015 before that Court under Section 142(b) of Negotiable Instruments Act on 13.04.2015, to condone the delay of 62 days in filing the above complaint before that Court. The said complaint and the said petitions were returned to the complainant on 23.07.2015, as per the proceedings of this Court in Roc.No.1406/A/2006/G3, for filing before the Court having proper jurisdiction.

3. The complainant / respondent herein re-presented the said complaint and the said petition before the Fast Track Court (Magisterial Level) Thoothukudi on 06.08.2015 and the said condone delay petition was taken on file, as Cr.M.P.No.205 of 2016 by the said Court. During pendency of the above application, the complainant filed Cr.M.P.No.1972 of 2016 for amending / rectifying the number of days of delay mistakenly mentioned as 62 days instead of one day, since the complainant came to know that the complaint was originally filed on 10.02.2015 before the XXIII Metropolitan Magistrate / Fast Track Court No.1, Saidapet, Chennai, as per the endorsement made by the learned Metropolitan Magistrate on the said complaint filed under Section 138 of Negotiable Instruments Act.

4. The learned Judicial Magistrate, Fast Track Court, Thoothukudi, heard both the petitions simultaneously ie., Cr.M.P.No.1972 of 2016 and Cr.M.P.No.205 of 2016 and passed the impugned order, dated 26.05.2016, allowing both the petitions for rectifying the the mistake mentioned as one day and also condoning the said delay of one day, considering the date of filing of the complaint originally on 10.02.2015 and the reasons assigned by the complainant and taken the complaint on file as C.C.No.210 of 2016, pending before that Court.

5. Aggrieved by the said order, the respondent in that complaint filed the present Revision praying to call for the records and to set aside the order of the learned Magistrate, Fast Track Court, Thoothukudi, dated 26.05.2016 and also the stay petition in Cr.M.P.No.6984 of 2016, in which, interim stay was granted and thereafter made absolute.

6. The learned counsel appearing for the Revision Petitioner would contend that the trial Court ought not to have decided the condone delay petition before deciding the amendment petition and the endorsement in green ink found in the original complaint, without court seal of the concerned court, is not sufficient to condone the delay and the endorsement made in green ink on the complaint could not be presumed that the endorsement was made by the concerned Magistrate alone.

7. During pendency of the stay petition in this Revision, <https://hdservices.ecourts.gov.in/hdservices/> directed to produce the copy of the entry of the complaint made in No.12 Register maintained by the XXIII Metropolitan Magistrate / Fast Track Court No.1, Saidapet,



Chennai, and also to call for a report from that Court upon registering of the complaint in No.12 Register maintained by that Court.

8. The respondent has not chosen to produce the copy of the register and the report was also not received from that Court. However, this Court perused the available materials on record and also considered the rival submissions made by the counsel appearing for the parties.

9. It is admitted in the Revision that the original complaint filed by the respondent under Section 138 of Negotiable Instruments Act, before the XXIII Metropolitan Magistrate / Fast Track Court No.1, Saidapet, Chennai and latter on re-presenting the said complaint by the respondent herein and was taken on file by the learned Judicial Magistrate, Fast Track Court, Thoothukudi, and is pending as C.C.No.210 of 2016, in view of the impugned order. It is also further admitted that, as per the endorsement made in green ink on the case file before the XXIII Metropolitan Magistrate / Fast Track Court No.1, Saidapet, Chennai, which was filed on 10.02.2015 and check and call on 10.04.2015 and the same was initialled by the concerned Magistrate. Considering the above endorsement made in green ink by the learned Magistrate on 10.02.2015 that the case was received by it and check and call on 10.04.2015, the learned Magistrate, Thoothukudi, has decided that the original complaint was filed on 10.02.2015 and hence, there is one day delay in filing the said complaint and the delay was also condoned, considering the reasons assigned by the respondent herein in Cr.M.P.No.1827 of 2015 in which, the delay of one day was properly explained by the respondent in his affidavit.

10. The learned counsel appearing for the respondent would contend that the writing in the green ink may be a forged one and hence, the Court should not take that into account and no date seal of the Court is found on 10.02.2015 in the original complaint. Though there is no date seal found on the original complaint, the endorsement made by the concerned Magistrate found on 10.02.2015 in the said complaint and it cannot be said that the endorsement made in the green ink is a forged one. Further, the petitioner has not shown any material to substantiate his allegation in respect of the said endorsement made in the green ink by the concerned Magistrate.

11. As per Section 142(b) of Negotiable Instruments Act, complaint is made within one month on the date on which the cause of action arises under Clause 'C' of the proviso to Section 138, provided that the cognizance of the complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period [proviso is inserted by Act 55 of 2002 Section 9 w.e.f. 6.2.2003]. Section 138(c) reads that "the drawer of such



cheque fails to make the payment of said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice."

12. As per the complaint filed under Section 138 of Negotiable Instruments Act it is stated that the complainant issued a statutory demand legal Notice, dated 24.12.2014 and it was acknowledged by all the accused on 26.12.2014. Considering the endorsement made in green ink on the original complaint by the concerned Magistrate on 10.02.2015, there is a delay of one day in filing the said complaint, which is condoned by the trial Court. Hence, the trial Court has considered the reasons for delay and condoned the said delay also. Hence, this Court is not inclined to interfere with the order passed by the trial Court in Cr.M.P.No.205 of 2016 and Cr.M.P.No.1972 of 2016 and there is no reason to intervene in the said orders, by this Court. Accordingly, the Revision Petition stands dismissed.

Sd/-

Assistant Registrar(Co)

/True copy/

Sub Assistant Registrar

To

- 1.The Fast Track Court Magistrate Level,
Tuticorin, Tuticorin District
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Record Keeper,
Criminal Record,
Madurai Bench of Madras High Court.

+1 cc to Mr.B.Rajesh Saravanan, Advocate in SR.No. 56099
+1 cc to Mr.K.A.Ramakrishnan , Advocate in SR.No. 56498

MPK

AE/KP/SAR2/06.06.2017/4P/6C

Pre-Delivery Order made in
Cr1.RC(MD)No.552 of 2016

Dated:-

10.05.2017