



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.08.2017

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THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C(MD).No.113 of 2013

S.Kumar

... Petitioner

-Vs-

V.S.Krishnan

... Respondent

Prayer : Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, to call for the records relating to the order dated 19.07.2011 made in Crl.R.C.No.28 of 2011 on the file of the learned Additional District & Sessions Judge / Fast Tract Court-II, Trichy and set aside the same.

For Petitioner : Mr.H.Lakshmi Shankar

For Respondent : Mr.J.Barathan

O R D E R

Challenging the order passed by the learned Additional District & Sessions Judge / Fast Track Court-II, Trichy made in Crl.R.C.28 of 2011, dated 19.07.2011, the present Criminal Revision Petition has been filed.

2. The case of the petitioner reads as follows:

2 (i) The respondent / accused herein had received a sum of Rs.4,00,000/- (Rupees Four Lakhs only) on 02.10.2007, for the purpose of his business from the petitioner and also executed a promissory note in favour of the petitioner. Thereafter, in order to discharge the part of the loan amount, the respondent herein issued a cheque for a sum of Rs.4,00,000/- bearing No.843221, drawn on State Bank of India, Siruthozhil Branch, Thuvakudi I.E., Trichy-15, dated 20.05.2009, when the cheque was presented by the petitioner, the cheque was returned as "insufficient fund". Thereafter the petitioner issued a notice on the respondent demanding money. The respondent filed a reply notice stating that the respondent has given blank signed cheques at the time of borrowing the money from the petitioner and he has only borrowed a sum of Rs.1,00,000/- (Rupees One Lakh only). Thereafter, he has paid a sum of Rs.1,25,000/- with interest on various dates. But now using the cheques, the petitioner /



complainant is demanding more money.

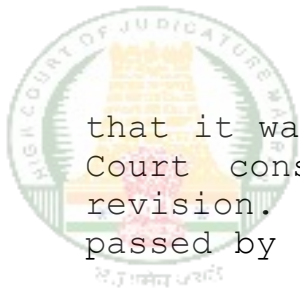
2 (ii) Thereafter, the petitioner filed a complaint for an offence under Sections 138 and 142 of the Negotiable Instruments Act and Section 420 of the I.P.C., under Section 200 of the Cr.P.C. There is a delay of 230 days for filing the complaint. Hence, the petitioner filed Crl.M.P.No.524 of 2010 under Section 142(b) of the Negotiable Instruments Act, for condoning the delay. The reason for the delay is that the cheque and memo of dishonour were mixed up with other documents and papers in the petitioner's advocate's office and it was traced only on 21.02.2010.

2 (iii) Earlier, the trial Court allowed the application and condoned the delay. Challenging the same, the accused / respondent filed a revision case in Crl.R.C.No.28 of 2011, before the file of the Additional District and Sessions Court / Fast Track Court-II, Trichy, and the Revisional Court allowed the revision petition and set aside the order passed by the trial Court. Now challenging the same, the petitioner herein filed the present revision case.

3. I have heard Mr.H.H.Lakshmi Shankar, learned counsel appearing for the petitioner and Mr.J.Barathan, learned counsel appearing for the respondent and perused the records carefully.

4. The learned counsel for the petitioner would contend that the lower appellate Court, without considering the reasons stated for the delay and also without considering the merits of the case, allowed the revision case filed by the respondent herein. Earlier the trial Court, on considering the entire materials and evidence and being satisfied with the reasons stated for delay has rightly allowed the delay condonation application. Even though there is no merit in the revision filed by the respondent herein, on the basis of assumption, the lower appellate Court allowed the revision and set aside the order passed by the trial Court. There are sufficient reasons for condoning the delay and the Trial Court has accepted the same, but the revision Court has disbelieved the same.

5. The learned counsel appearing for the respondent / accused would contend that the petitioner admitted the borrowal of Rs.1,00,000/- and discharged the same with interest of Rs.1,25,000/-. But the petitioner / complainant demanded more interest and issued a legal notice on the respondent. In such circumstances, the respondent filed a suit against the petitioner for permanent injunction to return the documents given by the respondent herein and also not to interfere with the respondent's peaceful enjoyment of the property. The reason stated for condoning the delay by the petitioner is not acceptable, and no supporting affidavit has been filed by the advocate to establish



that it was actually lost in the advocate's office. The Revisional Court considered the entire materials and rightly allowed the revision. There is no illegality or irregularity in the order passed by the Court below.

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6. I have carefully considered the rival submissions.

7. A perusal of the affidavit filed in support of the petition to condone delay, it shows that the cheque and the memo of dishonour were mixed up in the petitioner's advocate's office with other documents and papers. In the above circumstance, the advocate atleast ought to have filed an affidavit to support his contention. There is no material available to show that the papers were mixed with the other documents. After considering all those materials, the Court below allowed the revision and dismissed the petition to condone the delay as the delay was not properly explained by the petitioner. I find no illegality and irregularity in the order passed by the Court below. Hence, there is no merit in this revision petition. Hence this Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar (CS-II)

/True copy/

Sub Assistant Registrar

To

1. The Additional District & Sessions Judge
/ Fast Tract Court-II,
Trichy.

2. The Judicial Magistrate No.VI,
Trichy.

+ 1 CC TO MR.T.V.SIVAKUMAR, ADVOCATE IN SR No.71739
+ 1 CC TO MR.T.R.JEYAPALAM, ADVOCATE IN SR No.71775

sm/rml

MK/MR KKR/SAR-1/13.09.2017/3P/5C