

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

Crl.R.C. No.2461 of 2017

ORDER:

This Criminal Revision Case is filed under Sections 397 and 401 Cr.P.C questioning the legality, propriety and regularity of the order dated 28.08.2017 in Crl.M.P.No.1059 of 2017 in Crl.A.(SR) No.4911 of 2017 passed by the Metropolitan Sessions Judge, Hyderabad allowing the said petition to condone the delay of 150 days in filing the appeal against the order dated 29.09.2016 in C.C.No.347 of 2016 passed by the XVIII Additional Chief Metropolitan Magistrate, Hyderabad, dismissing the complaint filed for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. During pendency of the calendar case, on account of amendment to the Negotiable Instruments Act, the matter was transferred to XVII Additional Chief Metropolitan Magistrate, Hyderabad and numbered as C.C.No.385 of 2016 and further transferred on 03.05.2016 to XVIII Additional Chief Metropolitan Magistrate, Hyderabad on administrative grounds and renumbered as C.C.No.347 of 2016. The matter went on several adjournments, but respondent No.2 did not pay process fee and thereby the complaint was dismissed for non-payment of process fee.

3. The appeal was filed against the dismissal order on the ground that the counsel Sri Laxman Babu Kandhi suffered major fracture to his left leg, two middle bones with open wounds in an accident and admitted in KIMS Hospital on 01.07.2015 and under

went major surgery and doctors advised him to take bed rest and undergo physiotherapy for one year after discharge. As such, he continued his profession with the help of his friend Anupal Reddy, Advocate and that he also left the office and went to USA on 21.06.2016 and thereby there was no communication between the petitioner and the counsel to prosecute C.C. before the Magistrate. As respondent No.2 did not pay process fee, consequently C.C. was dismissed and against the said dismissal order, an appeal could not be filed within time on account of reasons explained above. Thereby, there was a delay of 150 days in preferring the appeal, which is beyond his control.

4. The petitioners herein filed counter in CrI.M.P. contending that no reasonable cause muchless sufficient cause is shown to condone delay by exercising discretionary power under Section 5 of the Limitation Act, 1963 and thereby the petition is not maintainable and prayed for dismissal of the said petition.

5. The Sessions Judge accepting the allegations made in the affidavit filed along with the petition, based on history of the case and documents filed by the counsel establishing that the counsel was hospitalized, delay was condoned in filing the appeal holding that the petitioner shown sufficient cause for condonation of delay.

6. Aggrieved by the order passed by the Sessions Judge, this revision case is filed by the accused mainly on the ground that the 2nd respondent did not make out sufficient cause to condone delay, exercising power under Section 5 of the Limitation Act and in the absence of proper explanation that sustaining injury in the road

accident by the counsel for two years prior to the passing of the order is not justifiable and that the Sessions Judge ought not to have exercised discretion to condone such delay when the petitioner was not prevented from filing appeal due to reasons beyond his reasonable control and prayed to set aside the order passed by the Sessions Judge.

7. During hearing, learned counsel for the petitioners would submit that Sri Laxman Babu Kandi, Advocate suffered with injuries, six months after filing complaint. Moreover, he underwent treatment in hospital and discharged from the hospital on 08.07.2015 at 01.35PM i.e. immediately after one week from the date of sustaining injuries. Even the doctor advised the said counsel to under go Physiotherapy for a period of one year and it was expired on 08.07.2016, but whereas the complaint was dismissed on 29.09.2016 i.e. three months after expiry of period of physiotherapy and discharged from hospital as advised by the doctor. The contention of the learned counsel for the petitioner is that the counsel Sri Laxman Babu Kandi authorized his junior Anupal Reddy, Advocate, who left the office on 21.06.2016 and went to USA, thereafter the case was prosecuted by the counsel, but did not pay process fee for service of summons.

8. No doubt, the Court cannot adopt pedantic approach while deciding the petitions filed under Section 5 of the Limitation Act and consider the word sufficient cause liberally without adopting technical approach. In the present case, the ground urged before the Sessions Judge is that the counsel Laxman Babu Kandi

suffered a fracture injury in the month of July, 2015 after filing complaint and thereafter, he was advised to take bed rest and undergo physiotherapy for a period of one year, which was expired in the month of July, 2016. Even if the contention of the learned counsel for the 2nd respondent is accepted that after the case was prosecuted even in the absence of Anupal Reddy, Advocate, who went to USA, but failed to pay process fee and get the complaint dismissed on 29.09.2016 for non payment of process fee. But he applied for certified copy of the order on 30.08.2017 and took delivery copy on 01.09.2017. Thus, the 2nd respondent applied for issue of certified copy after 11 months i.e. on 30.08.2017 and obtained certified copy on 01.09.2017 itself. Therefore, the delay has to be calculated from the date of dismissal and the period alleged for filing the appeal cannot be excluded when copy application was filed after expiry of limitation. Even otherwise, by the date of dismissal, counsel Sri Laxman Babu Kandi has regained his health according to the allegations made in the affidavit. Therefore, the reason assigned by the 2nd respondent for the delay in preferring the appeal is not sufficient cause since the 2nd respondent was not prevented by a cause which is beyond his reasonable control. But the appellate Court on erroneous acceptance of the material, allowed the petition exercising its discretion. The 2nd respondent did not approach the Court with true facts and there is any amount of illegality committed by the Court below. Therefore, the order passed by the trial Court is liable to be set aside by exercising power under Sections 397 and 401 Cr.P.C.

9. Accordingly, the Criminal Revision Case is allowed setting aside the order dated 28.08.2017 passed in CrI.M.P.No.1059 of 2017 in CrI.A.(SR) No.4911 of 2017 by the Metropolitan Sessions Judge, Hyberabad and consequently CrI.M.P.No.1059 of 2017 is dismissed.

Miscellaneous petitions, if any, pending in the criminal revision case, shall stand closed.

M. SATYANARAYANA MURTHY J

Date: 06.10.2017
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