

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.450 OF 2017

ORDER:

The present petition, under Section 482 of the Code of Criminal Procedure, 1973, is filed to quash the order dated 13.12.2016 in CrI.M.P.No.719 of 2016 in CrI.R.P.Sr.No.2297 of 2016 on the file of the Principal Sessions Judge, West Godavari at Eluru, whereby and whereunder the request to condone the delay of 99 days in preferring the Criminal Revision Petition against the order dated 30.11.2015 in CrI.M.P.No.2510 of 2015 in C.C.No.513 of 2011 on the file of the Judicial Magistrate of First Class, Jangareddigudem, was rejected.

Heard Sri Nimmagadda Satyanarayana, learned counsel for the petitioners, and the learned Additional Public Prosecutor for the State of Andhra Pradesh appearing for the 1st respondent.

At request of learned counsel for both sides, the present petition is taken up for disposal at the stage of admission.

The fact-situation would show that the 2nd respondent herein filed a private complaint before the learned Judicial Magistrate of First Class, Jangareddigudem, levelling the allegations against the petitioners for the offences under Sections 138 and 141 of the Negotiable Instruments Act read with Section 34 of IPC and the same was assigned C.C.No.513 of 2011. Having observed usual formalities, the learned Magistrate has almost completed the trial and, at that stage, the petitioners herein filed

Crl.M.P.No.2510 of 2015 in C.C.No.513 of 2011 under Section 91 of the Code of the Criminal Procedure requesting the Court to issue summons to the Branch Manager, State Bank of India, Polavaram Branch, and the Branch Manager, Canara Bank, Ootamund Branch, Nilgiris District, Tamilnadu State, to give evidence. By order dated 30.11.2015, the learned Magistrate acceded to the said request, but, however, while allowing the petition, directed the petitioners to deposit Rs.500/- to the first witness and Rs.1,500/- to the second witness for the expenses of the witnesses when they attend the Court. The petitioners were directed to deposit the said amounts on or before 03.12.2015 with consequential direction that if any of the conditions are violated, the petition stands dismissed.

It is not in dispute that the petitioners violated the conditions imposed in the order, dated 30.11.2015, and that is how the default order automatically worked out. As there being no other alternative, the petitioners filed Criminal Revision Petition before the Principal Sessions Judge, West Godavari at Eluru, questioning the order dated 30.11.2015. However, since there was 99 days delay in preferring the said Revision Petition, the petitioners filed Crl.M.P.No.719 of 2016 to condone the said delay. By the order under challenge, the request of condoning the delay prayed by the petitioners was rejected by the learned Sessions Judge on the ground that no sufficient cause was shown to condone the

delay. That is how the petitioners are before this Court requesting to grant the aforesaid relief.

Learned counsel for the petitioners would submit that due to ill health, the delay occasioned and one chance can be afforded to the petitioners as the offences alleged against them are punishable under Sections 138 and 141 of the Negotiable Instruments Act and no prejudice would be caused to the defacto-complainant, if the petition is allowed.

On perusal of the order under challenge, it is evident that the Sessions Judge has recorded definite findings in rejecting the request of the petitioners. The learned Sessions Judge felt that the two reasons stated by the petitioners for the delay i.e., that they are unaware of the proceedings and could not contact the counsel, are not convincing, and the third reason that petitioner No.2, who is one of the Directors of the petitioner No.1 – Company, suffered ill-health, does not find support, as no document was filed showing ill-health suffered by him, and thereby, rejected the request of the petitioners.

It is true, the petitioners cannot plead ignorance as to passing of the order by the learned Magistrate imposing conditions when they intended to summon the witnesses and examine them in the case registered for the offences punishable under Sections 138 and 141 of N.I.Act. Prudence ought to have been shown by the petitioners in

obeying the conditions imposed by the learned Magistrate, which they did not do.

That apart, the petitioners preferred Criminal Revision Petition with a delay of 99 days and the same shows that they were not diligent enough even at the time of filing the Revision Petition. Further more, the petitioners have neither shown plausible reasons for the delay nor the reason of ill-health pleaded by them is supported by any documentary evidence. The very fact that the petitioners failed to move the Revisional Court in time and their maintaining silence for about 99 days reflect their conduct in not being prudent enough, having made request to summon the witnesses, which was acceded to by the learned Magistrate. To substantiate the cause to condone the delay of 99 days in preferring the Revision Petition, there is no material placed on record and a casual approach has been made by the petitioners. Therefore, there is no merit in the present petition.

Accordingly, the Criminal Petition is dismissed at the stage of admission itself.

Miscellaneous Petitions, if any, pending in this petition, shall stand closed.

A. SHANKAR NARAYANA, J

January 24, 2017.

v v