

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

CRIMINAL REVISION CASE Nos.865, 982, 983, 984, 985, 986, 987, 988,

989, 990, 991, 992, 994, 995, 996, 997, 998 & 999 of 2011

COMMON ORDER:

1 All these Criminal Revision Cases are filed under Section 397 and 401 Cr.P.C. challenging the common order dated 07.03.2011 passed in CrI.M.P.No.5523 of 2010 in SR No.10831 of 2010, CrI.M.P.No.5460 of 2010 in SR No.11111 of 2010, CrI.M.P.No.5432 of 2010 in SR No.10994 of 2010, CrI.M.P.No.5464 of 2010 in SR No.11114 of 2010, CrI.M.P.No.5433 of 2010 in SR No.10996 of 2010, CrI.M.P.No.5461 of 2010 in SR No.11109 of 2010, CrI.M.P.No.5527 of 2010 in SR No.10826 of 2010, CrI.M.P.No.5524 of 2010 in SR No.11115 of 2010, CrI.M.P.No.5526 of 2010 in SR No.10828 of 2010, CrI.M.P.No.5467 of 2010 in SR No.11107 of 2010, CrI.M.P.No.5463 of 2010 in SR No.11110 of 2010, CrI.M.P.No.5462 of 2010 in SR No.11112 of 2010, CrI.M.P.No.5431 of 2010 in SR No.10992 of 2010, CrI.M.P.No.5528 of 2010 in SR No.10832 of 2010, CrI.M.P.No.5436 of 2010 in SR No.10995 of 2010, CrI.M.P.No.5525 of 2010 in SR No.10827 of 2010, CrI.M.P.No.5465 of 2010 in SR No.11113 of 2010, CrI.M.P.No.5430 of 2010 in SR No.10993 of 2010 respectively on the file of the Court of the II Additional Judicial First Class Magistrate Tanuku, West Godavari District.

2 Since the point involved in all these revision cases is one and the same, all the revision cases are disposed of by this common order.

3 The learned counsel for the petitioner strenuously submitted that the trial Court without considering the scope of Section 142 (b) of the Negotiable Instruments Act, condoned the delay of 16 days in filing the compliant by the first respondent on erroneous grounds. She further

submitted that the trial Court failed to consider that the petition to condone delay shall not be allowed without showing a sufficient cause by the petitioner. She further submitted that if the order passed by the trial Court is allowed to stand, it would, certainly, amount to miscarriage of justice.

4 *Per contra*, the learned counsel for the first respondent submitted that the first respondent has assigned reasons much less cogent and valid reasons to condone the delay of 16 days in filing the complaint. He further submitted that the first respondent could not file the compliant within the period of limitation due to the delay in convening of the Board of Directors' meeting and that aspect was considered by the trial Court in right perspective and condoned the delay. He further submitted that this Court shall not lightly interfere with the discretionary orders passed by the Courts below.

5 The point that arises for consideration in these Criminal Revision cases is "Whether the order passed by the trial Court is sustainable either on facts or in law?"

6 The facts leading to the filing of the present Criminal Revision Case are as follows:

7 The petitioner issued cheques in favour of the first respondent and the same were dishonoured on presentation by the first respondent. The first respondent got issued a legal notices to the petitioner on 07.08.2010 under Section 138 of N.I. Act directing the petitioner to pay the amount covered under the cheques within 15 days. The petitioner received the legal notice on 10.08.2010 and remained silent. The first respondent, having no other alternative, filed the complaint on 13.10.2010 with a delay of 16 days. Along with the complaints the first respondent also

filed petitions under section 142 (b) of N.I.Act to condone the delay of 16 days. The trial Court, after affording reasonable opportunity to both parties, arrived at a conclusion that the first respondent has assigned reasons much less cogent and valid reasons to condone the delay and allowed the petitions by common order dated 07.03.2011. Hence the present Criminal Revision Cases.

8 To substantiate the arguments, the learned counsel for the first respondent has drawn the attention of this Court to the following decisions:

**COLLECTOR LAND ACQUISITION, ANANTNAG AND ANOTHER
VS. KATIJI & OTHERS¹** wherein the Hon'ble apex Court held at para No.3 as follows:

The legislature has conferred the power to condone delay by enacting Section 5 of the Indian Limitation Act of 1963 in order to enable the Courts to do substantial justice to parties by disposing of matters on 'merits'. The expression "sufficient cause" employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice--that being the life-purpose for the existence of the institution of Courts. It is common knowledge that this Court has been making a justifiably liberal approach in matters instituted in this Court. But the message does not appear to have percolated down to all the other Courts in the hierarchy. And such a liberal approach is adopted on principle as it is realized that:-

1. Ordinarily a litigant does not stand to benefit by lodging an appeal late.
2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.
3. "Every day's delay must be explained" does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational common sense pragmatic manner.
4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.
5. There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact he runs a serious risk.

¹ (1987) 2 SCC 107

6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.

N. BALAKRISHNAN VS. M. KRISHNAMURTHY² wherein the

Hon'ble apex Court held at para No.3 as follows:

9. It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter, acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to want of acceptable explanation whereas in certain other cases delay of very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in reversional jurisdiction, unless the exercise of discretion was on whole untenable grounds or arbitrary or perverse....

9 Let me consider the facts of the case on hand in the light of the submissions made by the learned counsel for the parties and the legal principle enunciated in the cases cited supra.

10 It is not in dispute that the first respondent has to file the complaint on or before 25.09.2010., whereas the complaint was filed on 13.10.2010 with a delay of 17 days. This court carefully perused the petition as well as the counter filed by the parties before the trial Court in order to appreciate the rival contentions.

11 The first respondent has taken a specific plea in the petition that for one reason or the other, the Board of Directors' meeting was not convened as per schedule, therefore, it could not authorise the first respondent to file the complaint in time. A perusal of the record reveals that the special power of attorney was given to one SVK Durgarao to present the complaint on behalf of the company. It is needless to say that the company being a juristic personality has to authorise some body to file the complaint on its behalf. It is a known fact that for various reasons the companies may not convene the Board of Directors meeting

² (1988) 7 SCC 123

as per schedule. The learned counsel for the petitioner strenuously submitted that even though the authorisation was given on 28.09.2010 by the Board of Directors, the complaint was filed on 13.10.2010. It is a matter of common knowledge that the parties have to approach their counsel for preparation of the complaint. In order to prepare the complaint, the parties have to furnish necessary information and handover relevant documents to the counsel. If there is a delay in filing the complaint, the petitioner has to file an affidavit seeking to condone the delay by mentioning the reasons for such delay. The above said process may take some considerable time. It is needless to say that the Court shall not dismiss the petitions on technicalities without taking into consideration other relevant factors. While deciding the petitions of this nature, the approach of the Court shall be pragmatic but not pedantic. A duty is cast on the Court to strike a balance between the parties to the proceedings while deciding petitions of this nature. The Court shall not lose sight of the aspect whether allowing of such petitions would cause any prejudice to the respondent or not. In the instant case, if the petition is not allowed, it may not be possible for the first respondent to ventilate its legitimate and legal grievance. Even if the petition is allowed, it may not cause any prejudice to the petitioner. It is needless to say that this Court while exercising jurisdiction under Section 397 Cr.P.C shall not lightly interfere with the discretionary orders passed by the courts below. Unless the order is allowed to stand, it would amount to miscarriage of justice.

12 The trial Court has rightly considered various aspects and allowed the petitions by assigning reasons much less cogent and valid reasons. I am fully agreeing with the findings recorded by the Court below. There is no illegality, irregularity or impropriety in the order passed by the court

below which warrants interference of this Court in exercise of power under Section 397 Cr.P.C.

13 Having regard to the facts and circumstances of the case and also the principle enunciated in the cases cited supra, I am of the considered view that this is not a fit case to allow the Revision Cases. All these Revision Cases are devoid of merits and bonafides.

14 Accordingly, all these Criminal Revision Cases are dismissed. As a sequel, miscellaneous petitions, if any pending in all these Criminal Revision Cases, shall stand closed.

Date: 07.09.2017
Kvsn



T. SUNIL CHOWDARY, J.