

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2194 of 2017

JUDGMENT:

This Criminal Revision Case is filed by the petitioner/ Accused under Sections 397 and 401 of Criminal Procedure Code, challenging the order, dated 26-04-2017 in CrI.M.P.No.537 of 2017 in C.F.R.No.802 of 2017 passed by the Judicial Magistrate of First Class, Wanaparthy.

CrI.M.P.No.537 of 2017 in C.F.R.No.802 of 2017 is filed by the complainant/respondent herein under Section 142 (b) of the Negotiable Instruments Act (for short, 'the Act') for condonation of delay of 325 days in filing the complaint on the ground that the complainant had met with an accident, lost the original complaint along with documents when he went to file the same at Athmakur Court and recently the complaint was traced as it was mixed up with other files, therefore, he could not file the complaint in time and requested the Court below to condone delay of 325 days. The respondent/petitioner herein filed counter denying the material allegations while contending that there is gross negligence on the part of the complainant and based on the vague allegation of the complainant, delay cannot be condoned by exercising the powers conferred under Section 142 (1)(b) of the Act and prayed for dismissal. But the

Judicial Magistrate of First Class, Wanaparthy condoned the delay assigning his own reason by allowing the petition.

The present revision is filed, challenging the said order on the ground that delay is abnormal, which is not explained by the complainant and therefore, the order passed by the Court below is illegal. Learned counsel for the petitioner/accused placed reliance on a judgment reported in ***Kunhimammed v. Khadeeja***¹ and on the strength of the principles laid down in the above judgment, he contended that the Court below ought not to have condone the delay.

None appeared for the respondent, though notice was served.

As seen from the material, the Court below passed the order under challenge condoning delay of 325 days believing the cause shown by the complainant as it is a cause beyond the control of the complainant. But, now, the contention before this Court is that the Court cannot condone the delay by exercising the power under Section 5 of the Limitation Act and he placed the reliance on the judgment 1st cited above, wherein the Kerala High Court in the year 1994 had an occasion to decide about the extension of time under Section 5 of Limitation Act but the law declared by the Kerala High Court delay in filing complaint cannot be considered or

¹ 1995 (2) ALT (CrI.) 420 (Ker.)

extended under Section 5 of the Limitation Act but the present complaint was filed in the year 2017 i.e., subsequent amendment to Negotiable Instruments Act by Act 55 of 2002 w.e.f., 06-02-2013 and proviso to Sub-Clause (b) of Sub-Section (1) of Section 142 of the Act is added. Hence, the law declared by Court based on pre-amended Act cannot be applied to the present complaint.

According to Section 142 (1)(b) of the Act, such complaint shall be made within one month of the date on which the cause of action arise under Clause (c) of the proviso to Section 138 of the Act provided that the cognizance of a complaint may be taken by the Court after prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making complaint within such period. What is sufficient cause is not explained anywhere but it may be construed as a cause which is beyond the reasonable control of the respondent/complainant. If that is the case, the mixing up of complaint with the records and tracing the same can be said to be a reasonable cause, which is beyond the control of the complainant, therefore, condonation of delay by the trial Court by exercising power under Section 142 (1)(b) of the Act is in accordance with law.

The power of this Court under Sections 397 and 401 of Cr.P.C., is limited. If it finds that there is gross irregularity in the order passed by the Court below, this Court can exercise

the power conferred under Sections 397 and 401 of Cr.P.C. But here the Court below recorded its own reason satisfying itself that the cause shown is sufficient for condonation of delay of 325 days in filing the complaint by exercising power under Section 142 (1)(b) of the Act and the same cannot be interfered by exercising the powers of this Court under Sections 397 and 401 of Cr.P.C., in view of limited jurisdiction that conferred on this Court. Hence, I find no merit in the revision and the same is liable to be dismissed.

In the result, the Criminal Revision Case is dismissed confirming the order, dated 26-04-2017 in CrI.M.P.No.537 of 2017 in C.F.R.No.802 of 2017 passed by the Judicial Magistrate of First Class, Wanaparthy.

The Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

August 17, 2017

Pn

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



CRIMINAL REVISION CASE No.2194 of 2017

August 17, 2017

Pn