

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.2111 of 2016

ORDER:

The revision petitioner is the complainant in C.C.No.553 of 2005 which is a case under Section 138 of Negotiable Instruments Act, filed against the revision 2nd respondent/sole accused for the offence committed by dishonour of cheque dated 06.01.2005 for Rs.5,00,000/- drawn on Union Bank of India, Guntur Branch, for the amount due as legally enforceable debt in favour of the complainant/revision petitioner. It is during pendency of the C.C. for service of summons avoiding by the accused, Non-Bailable Warrant (NBW) was ordered and while the same was in force from the default in payment of continuation batta and for non-appearance of the complainant, complaint was dismissed on 29.12.2011. Impugning the same, CrI.A(SR).No.4061 of 2015 filed with delay condonation of 1427 days vide CrI.M.P.No.1632 of 2015 and there also the respondent/accused remained exparte and the petitioner placed reliance on Ex.P1 medical certificate issued by Sri Venkateswara Hospital, Rajamahendravaram, with prescription. By the impugned order dated 11.07.2016, the learned Sessions Judge dismissed the delay condonation application. According to the case of the petitioner referred in the order of the lower Court, the petitioner-complainant had no knowledge about the dismissal of the complaint on 29.12.2011 and she came to know subsequently while she was suffering with Rheumatic Arthritis and undergoing treatment under the Doctors of Sri Venkateswara Hospital and thereby could not file the unnumbered appeal in time and the medical certificate Ex.P1 refers she was bed ridden for

most of the time from 10.12.2011 to 30.11.2015 and the petition was filed on 01.12.2015. The lower Court with the observation that had there been any truth, there could be more medical record that was not filed in disbelieving the certificate and in dismissing the delay condonation application. In fact as per Section 5 of the Limitation Act and also from the analogy covered by Sections 468 to 473 Cr.P.C. the existence of sufficient cause is the criteria and the approach required is pragmatic and liberal more particularly from the reason that no person generally and wantonly will allow the limitation to exhaust in approaching the Court, though due diligence is otherwise required. When there is nothing to show any deliberate non-filing of the unnumbered appeal impugning the calendar case dismissal for default order resulting in acquittal and once there is a medical certificate, apart from there is affidavit on oath with cogent reasons of she was shown totally bed ridden with the Rheumatic Arthritis and she further submitted the same saying she has no personnel knowledge from no information by the advocate about the dismissal of the complaint, but for later on enquiry came to know, nothing more is required to make out existence of the sufficient cause as the length of period is not criteria but for existence of sufficient cause or not. There lower Court should have been allowed the same by imposing costs. Thereby the order of the lower Court which is prone to revision jurisdiction covered by Section 397(1) Cr.P.C. as affecting the rights and non mere interlocutory in nature is liable to be set aside.

Having regard to the above and in the result, the impugned order is set aside and the criminal revision case is allowed subject

to payment of costs of Rs.10,000/- payable by the petitioner to the Blind Home organizing by the District Executive, East Godavari of the State of Andhra Pradesh, near at Rajahmundry in the Timmapuram Village by pay order and file proof of the compliance before the learned appellate Judge within one week from the date of receipt of the order for the learned District Judge in turn to send the pay order to the Blind Home so as to number the appeal if otherwise in order to decide on merits. It is made clear that if the compliance is not made within the stipulated time before the learned Sessions Judge pursuant to the order supra, without further reference to this Court, the revision stands dismissed upholding the order of the lower Court.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 17.01.2017
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