

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 29.01.2018

C O R A M

The Honourable Mr.JUSTICE M.V.MURALIDARAN

Crl.R.C.No.1549 of 2017

Shankar's Farm,
Proprietor Mr.N.Ravishankar,
No.14, Jaffar Street,
Chennai - 600 001.

.. Petitioner

Vs.

S.S.Sheik Ajmal

.. Respondent

PRAYER: Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure against the dismissal order passed on condone delay petition of appellant/complainant by the Principal Sessions Judge, Chennai, in Crl.M.P.No.5042 of 2017 in C.A.SR.No.3388 of 2017 order dated 14.10.2017.

For Petitioner : M/s.A.R.Nixon

For Respondent : No appearance

O R D E R

This revision arises against the judgment dated 14.10.2017 passed by Principal Sessions Judge, Chennai, in Crl.M.P.No.5042 of 2017 in C.A.SR.No.3388 of 2017.

2. Mr.A.R.Nixon, the learned counsel appearing for the petitioner and there is no representation for the respondent.

3. The case of the petitioner is that the complainant in C.C.No.2257 of 2008 on the file of the IV Fast Track Court, Metropolitan Magistrate, George Town, Chennai. The said complaint was filed under section 138 of Negotiable Instrument Act.

4. It is the further case of the petitioner that when he enquired his Power of Attorney about the pendency of the said complaint it was reported by the Power of Attorney, that the matter is pending before the court. Therefore, the petitioner believed that the reshuffle of jurisdiction in 138 cases, as per the direction of the Hon'ble Supreme Court, caused the delay in

proceedings in the above matter since this complaint was filed originally before the learned VII Metropolitan Magistrate, Chennai and subsequently, it was transferred to the learned Metropolitan Magistrate, IV Fast Track Court, George Town, Chennai.

5. While being so, all of a sudden the Power of Attorney of the petitioner resigned from the office of the petitioner in the month of November 2016 without handing over the materials of the above case. But later on the petitioner came to know that the above C.C.No.2257 of 2008 was dismissed for default on 27.03.2014 due to non-appearance of Power of Attorney.

6. The petitioner is having valid grounds since the complaint was filed for the issuance of cheque for a sum of Rs.12,00,000/- by the respondent/accused and immediately the petitioner has approached the present counsel on the lower court and handed over the bundle and thereafter only on his advice, he filed an appeal before the Principal Sessions Judge, Chennai. But as per the limitation he filed the said complaint within a period of 30 days whereas there was a delay of 965 days in filing the appeal against the order passed in C.C.No.2257 of 2008.

7. In the application for condone delay in the appeal the respondent was served through paper publication but the respondent has not appeared before the court below.

8. Without considering the petitioner's case, the learned Principal Sessions Judge, Chennai, in Crl.M.P.No.5042 of 2017 in C.A.SR.No.3388 of 2017 dated 14.10.2017 dismissed the application on the ground that though the Power of Attorney has left the office in the month of November 2016, the case was originally dismissed on 27.03.2014, therefore, the petitioner and his Power of Attorney were having knowledge about the dismissal of the complaint in the year 2014 itself.

9. Apart from this, the learned Principal Sessions Judge, Chennai, also states that each and every delay must be explained by convincing the court, the petitioner has not given any proper reason for each and every day delay and the reason assigned by the petitioner is not an explanatory one. Therefore, the learned Principal Sessions Judge has dismissed the said application.

10. Admittedly, the case is one under 138 of Negotiable Instrument Act and that too for Rs.12,00,000/- cheque amount. The respondent has not appeared even after the paper publication was effected.

11. The Hon'ble Supreme Court has passed an order in Civil Appeal No.(S).3777 of 2015, wherein an appeal in Special Leave Petition was filed against the order passed by this Court in Civil Revision Petition with a delay of 882 days. The Hon'ble Supreme Court considered the said case. Though the petitioner in the said Special Leave Petition has not given any valid reason, the Hon'ble Supreme Court states that fair opportunity must be given to the parties to put forth their case and thereafter the case should be decided on merits.

12. Admittedly, in this case originally the case was filed before the learned VII Metropolitan Magistrate, Chennai and subsequently, it was transferred to the learned Metropolitan Magistrate, IV Fast Track Court, George Town, Chennai. Whether the notice was served on the complainant and accused was not gone into by the learned Principal Sessions Judge, Chennai also.

13. The court must show some liberty in the petitions filed for condoning the delay and the main case. In this case the complaint was dismissed for default against which an appeal has been filed in C.A.SR.No.3388 of 2017 and it was also dismissed on the ground that the petitioner has not given proper explanation of huge delay of 965 days.

14. By giving one more opportunity to the petitioner and in the interest of natural justice, this Court finds that the Criminal Revision case ought to be allowed as the petitioner who is the complainant filed the complaint to compensate the huge delay. In fact, there is no representation for the respondents even though the notice was served and his name was printed in the cause list.

15. In the result:

(a) This criminal revision petition is allowed by setting aside the order passed in CrI.M.P.No.5042 of 2017 in C.A.SR.No.3388 of 2017, on condition that the petitioner should pay a sum of Rs.40,000/- as cost to the Headmistress Government Hobart Muslim (Girls) Higher Secondary School, Whites Road, Royapettah, Chennai - 600 014, within a period of four weeks from today and consequently, the delay of 965 days in preferring the appeal before the lower court is condoned.

(b) on production of payment receipt within the time stipulated by this Court, the Appellate Court viz. Principal Session Court, Chennai, is hereby directed to number the appeal and dispose of the same within a period of three months, by

giving notice to either parties;

(c) The Principal Session Court, Chennai, is directed to take up the revision on day to day basis, without giving any adjournments to either parties and to dispose the same. Both the parties are hereby directed to give their fullest co-operation for early disposal of the revision.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal Sessions Court, Chennai.
 - 2.The IV F.T.C. Metropolitan Magistrate, George Town, Chennai.
 - 3.The Headmistress,
Government Hobart Muslim (Girls),
Higher Secondary School, Whites Road,
Royapettah, Chennai.
 - 4.The Section Officer, Criminal Section, High Court Madras.
- +2cc to Mr.A.R.Nixon, Advocate, S.R.No.6407

Cr1.R.C.No.1549 of 2017

KAN(CO)
RRK(02/02/2018)

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