

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Crl.R.C.No.850 of 2018

A.Rajasekar

.. Petitioner

Vs

G.Anandhakrishnan

.. Respondent

Criminal Revision Petition filed under Sections 397 & 401 of Cr.P.C., to call for the records in Crl.M.P.No.6306 of 2017 in UN.S.T.C.S.R.7713 of 2017 on the file of the learned Judicial Magistrate, Fast Track Court, No.II (Magisterial Level), Poonamallee and set aside the order dated 18.06.2018 in Crl.M.P.No.6306 of 2017.

For Petitioner : Mr.A.M.Rahamath Ali
For Respondent : No Appearance

O R D E R

The petitioner filed this revision as against the order dated 18.06.2018 in Crl.M.P.No.6306 of 2017 in UN.S.T.C.S.R.7713 of 2017 passed by the learned Judicial Magistrate, Fast Track Court, No.II (Magisterial Level), Poonamallee.

2. The facts of the case are as follows:

(i)The respondent borrowed a sum of Rs.7,25,000/- from the petitioner/complainant. In order to discharge the said liability, he issued three cheques bearing Nos.000329, 000330 and 000331 in favour of the petitioner drawn on the Karur Vysya Bank Ltd., Poonamallee Branch, P.H.Road, Chennai 600 077. When the said three cheques were presented for collection, the same were returned unpaid with an endorsement "payment stopped by drawer". Thereafter, the petitioner issued a legal notice to the respondent on 04.01.2017 demanding the cheque amounts. The respondent received the said notice on 11.01.2017 and requested the petitioner to re-deposit the said three cheques on 18.03.2017.

(ii) Again, when the petitioner presented the said three cheques for collection, the same were returned with the same endorsement. The respondent neither came forward to reply the notice nor settled the three cheque amounts till date. Hence, the petitioner filed a complaint with a delay of 39 days under Section 142(b) of the Negotiable Instruments Act, 1881 in C.M.P.No.6306 of 2017 in UN S.T.C.S.R.No.7713 of 2017 before the Fast Track Court, Magisterial Level No.II, Poonamallee, Thiruvallur District.

(iii) The learned Judge dismissed the said petition by order dated 18.06.2018 stating that the reasons assigned for condoning the delay are not acceptable and the petition was filed with a delay of 39 days, whereas the delay occurred for a period of 49 days. Aggrieved by the said order, the present Criminal Revision Petition has been filed by the petitioner.

3. Heard the learned counsel for the petitioner. It is submitted by the learned counsel for the petitioner that though notice was served on the respondent, there is no representation for him. He has also filed affidavit of service to that effect and his name also printed in the cause list. However, there is no representation for the respondent either in person or through the learned counsel. Hence, this Court has decided to pass the orders on merits. This Court also perused the materials available on record carefully.

4. The learned counsel for the petitioner/complainant submitted that though the petitioner issued a legal notice on 04.01.2017, the respondent received the said notice only on 11.01.2017. The Negotiable Instruments Act stipulates that the petitioner has to wait for a period of 15 days after service of notice. Accordingly, the petitioner ought to have filed a petition within 30 days namely, on or before 24.02.2017. But, the petitioner filed a complaint only on 06.04.2017 with a delay of 39 days. The learned Judge, while deciding the petition, has erroneously calculated the days of delay as 49 days instead of 39 days and dismissed the petition stating that the reasons stated for condoning the delay are not acceptable.

5. The learned counsel for the petitioner further submitted that in view of the assurance given by the respondent, the petitioner waited for honouring the cheques. Hence, the delay has caused in filing the complaint and the delay caused is neither wilful nor wanton, but for the above bona-fide reason.

6. On a perusal of the records, it is seen that, admittedly, notice was served on 11.01.2017 and the period of limitation expired on 24.02.2017. The petitioner filed a complaint on 06.04.2017.

7.As per Section 138(c) of the Negotiable Instruments Act, if the drawer of the cheque fails to make the payment of the said amount or money to the payee in due course of the cheque within fifteen days on receipt of the said notice, thereafter the cause of action arises for filing the complaint. As per Section 142(b), the complaint has to be made within a period of one month of the date on which the cause of action arises under clause(c) of the proviso to Section 138.

8.In the present case, the delay in filing the condone delay petition was not properly mentioned for which the lower Court dismissed the condone delay application, against which the present revision is filed. However, the proviso to Section 142(b) gives powers to the lower Courts, if the complainant satisfies the sufficient cause for not making the complaint within such a period, the Court can condone the delay for filing the complaint.

9.So, in view of the above and considering the facts and circumstances of the case and also considering the submissions made by the learned counsel for the petitioner and in order to provide an opportunity to the petitioner to put forth his contentions before the Court, this Court is inclined to pass the following order:

"(i)The order dated 18.06.2018 passed in C.M.P.No.6306 of 2017 in UN.S.T.C.S.R.No.7713 of 2017 is set aside.

(ii)The petitioner is directed to file a fresh petition with proper averments and reasons for condoning the delay before the Court below within a period of two weeks from the date of receipt of a copy of this order.

(iii)On filing such petition by the petitioner, the Judicial Magistrate (Fast Track Court No.II) (Magisterial Level), Poonamallee, Thiruvallur District is directed to dispose of the said petition on merits and in accordance with law, within a period of four weeks thereafter, after giving due opportunities to both sides."

With the above said directions, the criminal revision petition is disposed of.

Sd/-
Deputy Registrar

//True Copy//

cla

To

The Judicial Magistrate,
Fast Track Court No.II,
(Magisterial Level),
Poonamallee.

+lcc to Mr.A.M.Rahamath Ali, Advocate SR.NO.72843

sm:31.10.2018

Cr1.R.C.No.850 of 2018



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