

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:14.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Crl.R.C.No.953 of 2018

V.Manikandan

... Petitioner

vs.

N.Veeraragavan

... Respondent

Prayer: Petition filed under Section 397 r/w 401 of Cr.P.C. against the order dated 18.05.2018, passed by the Judicial Magistrate, Fast Track Court (Magisterial Level No.II), Poonamallee, Chennai, in C.M.P.No.6056 of 2017 in S.T.C.SR.No.9311 of 2017.

For Petitioner : Mr.R.Rajesh Vivekananthan

For Respondent : Mr.C.N.Raman

ORDER

Challenging the order dated 18.05.2018, passed by the learned Judicial Magistrate, Fast Track Court (Magisterial Level No.II), Poonamallee, Chennai, made in C.M.P.No.6056 of 2017, the petitioner/complainant has filed the present criminal revision case.

2.The case of the petitioner is that the respondent herein approached him for financial assistance. The petitioner provided financial assistance to the tune of Rs.4,00,000/-, on 22.05.2016 at 12% interest per annum, as a hand loan. To discharge the said liability, the respondent issued a cheque, dated 28.06.2017. Subsequently, when the cheque was presented for realisation, the same has been returned dishonored, on 30.06.2017, with an endorsement 'funds insufficient'. Hence, the petitioner issued a legal notice dated 27.07.2017, to the respondent, demanding payment of the cheque amount, for which, the respondent has given a false reply, dated 28.09.2017. Since no proper reply has been forthcoming from the respondent, the petitioner was constrained to give second legal notice dated 28.09.2017. Even after the said notice, since no payment has been made by the respondent, the petitioner lodged a complaint, with a delay of five days. In order to get the delay condoned, the petitioner filed a petition in C.M.P.No.6056 of 2017, before the Judicial Magistrate, Fast Track Court, Poonamallee. However, the learned Magistrate, without properly appreciating the facts of the case, has erroneously dismissed the said petition. Hence the present revision.

3.The learned counsel for the petitioner contended that

the lower Court erred in coming to the conclusion that once first demand notice is issued, the second demand notice cannot be maintained. The lower Court also erred in calculating the delay, in lodging the complaint, from the date of first demand notice, however, the delay ought to have been calculated only from the date of second demand notice. Even the genuine reason given by the petitioner for the said delay has not been taken note of by the lower Court. Therefore, the learned counsel would pray for setting aside the order impugned in this revision.

4. It is an admitted case of both parties that the respondent has borrowed some money from the petitioner. The only contention raised on the side of the respondent is that the petitioner ought not have issued the second legal notice. The lower Court has dealt with the matter too technically. In matters of this nature, cutting across technicalities, the lower Court should have taken a lenient view and approached the matter in a different angle. However, without delving into the merits of the case, the lower Court, at the threshold itself dismissed the petition filed for condonation of delay. If the petitioner is deprived of his opportunity to defend the matter, certainly that would have serious consequences. I do not think that the petitioner, in the facts and circumstances of this case, had any deliberate intention, as he happened to be the person, who lent money to the respondent. Keeping all these facts in mind and in the interest of *Audi alterem*

partem, I would like to allow the application in C.M.P.No.6056 of 2017 in Un.S.T.C.SR.No.9311 of 2017, setting aside the order dated 18.05.2018, passed by the lower Court.

In the result, the Criminal Revision Case is allowed. The order, dated 18.05.2018, passed in CrI.M.P.No.6056 of 2017 in S.T.C.SR.No.9311 of 2017, is set aside and the petition is allowed. The lower Court is directed to take the matter on file and decide the same on merits and in accordance with law, as expeditiously as possible.

Msk

14.12.2018

सत्यमेव जयते

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To

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

2. The Public Prosecutor, High Court.

V.PARTHIBAN,J.

msk



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