

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19.07.2018
CORAM
THE HONOURABLE Mr.JUSTICE M. NIRMAL KUMAR

Crl.O.P.No.2469 of 2011
and
M.P.No.1 of 2011

J.Chitra,
W/o.M.Jayachandran.

... Petitioner/Complainant

Versus

N.Karpagavalli,
W/o.Natarajan.

... Respondent/Accused

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the order dated 02.12.2010 made in C.R.P.No.68 of 2010 on the file of the I Additional Sessions Court, Coimbatore confirming the order dated 02.06.2010 made in C.M.P.No.289 of 2010 on the file of the Judicial Magistrate Court No.II, Coimbatore and set aside the same by allowing this Criminal Original Petition.

For Petitioner : Mr.P.Kaviri Nadan for
Mr.N.Manokaran

For Respondent : Mr.J.Pratheep for
Mr.P.Saravana Sowmiyan

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O R D E R

This Criminal Original Petition is filed to call for the records relating to the order dated 02.12.2010 made in C.R.P.No.68 of 2010 on the file of the I Additional Sessions Court, Coimbatore confirming the order dated 02.06.2010 made in C.M.P.No.289 of 2010 on the file of the Judicial Magistrate Court No.II, Coimbatore and set aside the same by allowing this Criminal Original Petition.

2.The petitioner herein is the complainant, who had filed a case under Section 138 of the Negotiable Instruments Act against the respondent/accused herein before the Judicial Magistrate Court No.II, Coimbatore. During the filing of the complaint, the petitioner filed an affidavit petition under Section 142(b) of the Negotiable Instruments Act along with a petition to condone the delay of 114 days in presenting the complaint.

Thereafter, CrI.M.P.No.289 of 2011 was assigned to the condone delay petition filed along with the affidavit.

3.The Lower Court by order dated 02.06.2010 had dismissed the condone delay petition, on the reason that the petitioner had undertaken treatment for Viral Hepatitis and she was under bed rest from 25.08.2009, for which no documentary evidence was filed. With these observation, the learned Judicial Magistrate No.II, Coimbatore dismissed the condone delay petition.

4.On a bare perusal of the copy of the condone delay petition, it could be seen that in the petition the Doctor certificate dated 10.12.2009 has been annexed to the condone delay petition. In such circumstances, the finding of the Lower Court is perverse. Aggrieved by the order of the Lower Court, the complainant had approached the I Additional Sessions Court, Coimbatore by filing a Revision in C.R.P.No.68 of 2010. The learned I Additional Sessions Judge, Coimbatore by its order dated 02.12.2010, though, agrees that the petitioner had filed the document. Mere filing of the document would not make the Lower Court to agree and admit the same and found that the Revision Petition is not maintainable and confirmed the trial Court order. Aggrieved against which the petitioner had filed the above Criminal Original Petition.

5.It could be seen from the proviso under Section 142 of the Negotiable Instruments Act has been answered wherein it has stated that a complaint may be taken by the Court after the prescribed period, if the complainant satisfied the Court that he had sufficient cause for not making a complaint within such period. It will suffice for the Court to accept and condone the delay in presenting the complaint. Dismissing the complaint on technical ground would cause great hardship to the complainant. It amounts to short circuit and rejecting the case at the threshold stage. Hence, the right of the complainant would be affected and the complainant also referred to the Judgment of this Court in the case of P.Raju Vs. U.Ram Babu reported in 2013 (2) MWN (Cr.) DCC 30 (Mad.).

6.Considering the facts and circumstances of this case, this Court feels that the finding of the Courts' below are perverted, which has to be set aside. Thereby setting aside the order of the Sessions Court in C.r.P.No.60 of 2010 as well as the order of the Trial Court in C.M.P.No.289 of 2010 and accepts the reason given by the petitioner for the delay of 114 days in filing the complaint and condones the same.

7.The Trial Court is directed to take the complaint on file and on taking into consideration of the Sections 144, 145 and 146. Without any further delay, the Trial Court is directed to complete the trial of the case, since the case is pending from

the year 2007 and the Trial Court is directed to complete the trial within four months from the date of receipt of a copy of this order.

8.With this observation, the Criminal Original Petitions stands allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Judicial Magistrate No.II,
Coimbatore.
- 2.Do through the Chief Judicial Magistrate,
Coimbatore.
- 3.The I Additional Sessions Judge,
Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Saravana Sowmiyan, Advocate, S.R.No.48368
+1cc to Mr.N.Manokaran, Advocate, S.R.No.48254

Crl.O.P.No.2469 of 2011

MG(CO)

rrs 16/11/2018

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