

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.R.C.No.1363 of 2017

R.Rajakumar

...Petitioner/Petitioner/Complainant

Vs.

Mahaboob Jan

...Respondent/Respondent/Accused

The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to call for records relating to the order dated 13.09.2017 made in Crl.M.P.No.752 of 2017 in C.C.No.147 of 2009, on the file of the Fast Track Court II, Metropolitan Magistrate Court, Egmore at Allikulam, Chennai, examine the correctness and propriety of the same and to set aside the same.

For Petitioner : Ms.M.Anandaraj

For Respondent :

ORDER

The present criminal revision case has been filed by the complainant against the order passed by the Fast Track Court II, Metropolitan Magistrate, Egmore, dated 13.09.2017 in Crl.M.P.No.752 of 2017 in C.C.No.147 of 2009.

2 The petitioner herein has filed a complaint under Section 138 of Negotiable Instruments Act. The said complaint was filed with an application seeking to condone the delay of 12 days in presenting the complaint. However, the learned Magistrate has dismissed the complaint eventually by the impugned order dated 13.09.2017. The learned Magistrate reasoned that when the complaint was originally taken on file, the delay

was not noticed, but, only when the petitioner was cross examined, it was noticed that the petitioner has come up with the application seeking condonation of delay of 12 days, before that the prosecution side evidence has been completed.

3 The petitioner in the petition in Crl.M.P.No.752 of 2017, had stated that the delay was due to mix-up of the original case documents with the other case papers by his counsel and there was some delay in presenting the complaint. Now, the learned Magistrate not satisfied with the above reason dismissed the petition by order dated 13.09.2017, against which, the present revision case has been filed.

4 The learned counsel appearing for the petitioner would submit that the delay was only 12 days and that too the same was explained to the trial Court. Unfortunately, the trial Court has refused to condone the short delay of 12 days and thereby denied the valuable right of the petitioner to pursue his complaint as against the respondent/accused.

5 Although, notice has been served on the respondent, there is no appearance on behalf of the respondent/complainant.

6 Although, the reason as given by the petitioner for condonation of delay in presenting the complaint is cliched and routine one, yet the delay of 12 days cannot be considered as fatal to the complainant's remedy to pursue his complaint under Section 138 of Negotiable Instruments Act. By condoning the short delay of 12 days, no prejudice would be caused to the other side, namely the respondent/accused, as he can always set up his defence on the merits of the claim of the petitioner/complainant. In the matters of condonation of delay, the Court has to see whether any substantial prejudice would be caused to the other side and such condonation of delay will work clear hardship to the other side. In this case, no such hardship could be attributable to the other side by condoning the short delay of 12 days. The court cannot dismiss the petition for condonation of delay that too a short delay of 12 days by adopting pedantic approach, but should advance the substantive process of administration of justice. In this case, unfortunately, the Court below has been very hypertechnical in taking a rigid view in dismissing the petition seeking condonation of delay of nearly 12 days.

7 This Court, therefore is of the view that the impugned order dated 13.09.2017 made in CrI.M.P.No.752 of 2017 in C.C.No.147 of 2009 is liable to be interfered with and, therefore, the same is hereby set aside and the delay of 12 days is condoned. Accordingly, the criminal revision case is allowed and the learned Magistrate is directed to take the complaint on file and proceed with the matter in terms of Cr.P.C.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

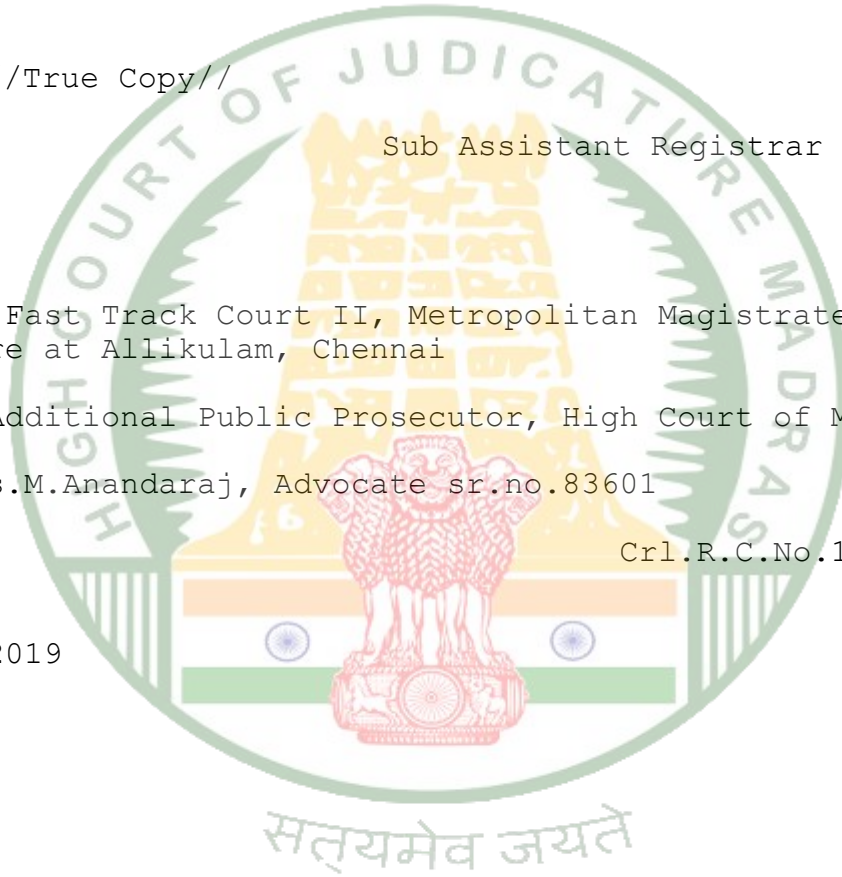
1. The Fast Track Court II, Metropolitan Magistrate Court,
Egmore at Allikulam, Chennai

2. The Additional Public Prosecutor, High Court of Madras.

+1cc to Ms.M.Anandaraj, Advocate sr.no.83601

CrI.R.C.No.1363 of 2017

ssd(co)
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