



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.03.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C.(MD) No.155 of 2018
and
Crl.M.P.(MD) No.2128 of 2018

Vellaisamy ... Petitioner / Accused
vs.

Rajalakshmi ...Respondent / Complainant

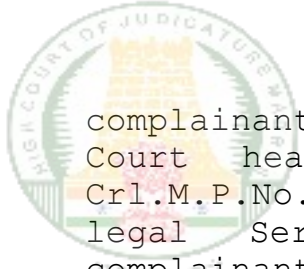
PRAYER: Criminal revision filed, under Sections 397 r/w 401 Cr.P.C., praying to call for the records pertaining to the order passed in Crl.M.P.No.6126 of 2015 in S.T.C.No.550 of 2017 dated 21.07.2017 by the learned Judicial Magistrate Court, Vedaendur, Dindigul District in allowing the condone delay of 340 days by the complainant in filing the case u/s 138 of Negotiable Instruments Act without giving the petitioner sufficient opportunity and to set aside the same.

For Petitioner : Mr.D.Selvaraj
For Respondent : Mr.D.Venkatesh

O R D E R

For the sake of convenience, the petitioner and the respondent are referred to as "the accused" and "complainant" respectively in this order.

2.The complainant initiated prosecution in C.C.No.258 of 2012 before the Judicial Magistrate, Ottanchatram under Section 138 of the Negotiable Instruments Act against the accused. On summons, the accused appeared before the learned Judicial Magistrate, Ottanchatram. During the pendency of the trial, the judgment of the Hon'ble Supreme Court in Dashrath Rupsingh Rathod v. State of Maharashtra reported in (2014) 3 MLJ (Crl) 475 (SC) came. Pursuant to which, the complaints under Section 138 of the Negotiable Instruments Act were being returned to the complainants for presentation before the jurisdictional Courts. Accordingly, the Judicial Magistrate, Ottanchatram returned the complaint in C.C.No.258 of 2012 to the complainant on 23.01.2015 with a direction to re-present the same before the Judicial Magistrate, Vedaendur. The complainant re-presented the complaint with a delay of 342 days. Therefore, the complainant filed Crl.M.P.No.6126 of 2015 for condonation of delay of 342 days. For the non-appearance of the complainant Crl.M.P.No.6126 of 2015 was dismissed by the learned Judicial Magistrate, Vedaendur on 30.09.2016. Therefore, the



complainant filed CrI.R.C.No.854 of 2016 before this Court. This Court heard the complainant and the accused and restored CrI.M.P.No.6126 of 2015 on file on payment of Rs.1,000/- to the legal Services Authority, Madurai Bench. Accordingly, the complainant paid the cost of Rs.1,000/- and got CrI.M.P.No.6126 of 2015 restored to file. Thereafter, the learned Judicial Magistrate, Vendasendur has allowed CrI.M.P.No.6126 of 2015 on 21.07.2017 by passing the following order:

"Petitioner present. Respondent already set exparte, since he refused to accept the summon. The reason assigned by the petitioner for delay of present. The petition that she has given a documents to the Advocate, there the documents misplaced on perusal of affidavit and the respondent remained exparte. This court deem fit to condone the delay, Reason satisfied. Hence this petition is allowed."

3.Challenging this order, the accused filed the present Criminal Revision Case with a delay of 50 days and therefore, the accused filed CrI.M.P.No.232 of 2018 in CrI.R.C.(MD) No.SR 36769 of 2017 under Section 5 of the Limitation Act. Today, this Court condoned the delay and has allowed CrI.M.P.(MD) No.232 of 2018 and has taken the main Criminal Revision Case for disposal.

4.Heard the learned counsel for the accused and the learned counsel for the complainant.

5.Learned counsel for the accused submitted that the trial Court should not have condoned the delay of 342 days without hearing the accused.

6.Per contra, the learned counsel for the complainant submitted that the summons sent to the accused was refused by him and therefore, the trial Court has condoned the delay.

7.This Court gave its anxious consideration to the rival submissions.

8.The main cheque case is of the year 2012. Since then the parties are made to run from pillar to post by sheer mishandling of the case. The delay of 342 days is not with regard to filing or institution of the prosecution but has occurred while representation to the jurisdictional Court. In fact the main complaint has been filed within time before the Judicial Magistrate, Ottanchathiram. Therefore, it was taken on file in C.C.No.258 of 2012. Admittedly, there was lot of uncertainty when the judgment of the Hon'ble Supreme Court in Dashrath Rupsingh Rathod v. State of Maharashtra reported in (2014) 3 MLJ (CrI) 475 (SC) came, on account of which, thousands of complaints were being transferred from one



Court to other either directly or by handing over the same to the complainant. This is one such case. Therefore, this Court does not find any reason to interfere in the order passed by the Judicial Magistrate, Vendasur, condoning the delay of 342 days.

9. In the result, this Criminal Revision Case stands dismissed. The complainant and accused are directed to appear before the Judicial Magistrate, Vendasur in S.T.C.No.550 of 2017 at 10.30 a.m. on 16.04.2018. On the appearance of the accused the Magistrate shall cause execution of the bond for Rs.10,000/- under Section 88 Cr.P.C. from the accused. Thereafter, the trial Court shall proceed with the trial in accordance with law. Consequently, connected Criminal Miscellaneous Petition stands closed.

Sd/-

Assistant Registrar(AS)

/True copy/

Sub Assistant Registrar

To:

1. The Judicial Magistrate,
Vendasur,
Dindigul District.

+1CC TO M/S.D.VENKATESH, ADVOCATE, SR NO.56085

Crl.R.C.(MD) No.155 of 2018
and Crl.M.P.(MD) No.2128 of 2018

sj

MS/SKN-RSK/SAR-1/26.03.2018/3P.3C