



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 03.01.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH
CrI.R.C.(MD) No.940 of 2017

and

CrI.M.P.(MD) Nos.11514 & 11515 of 2017

V.Esakkiammal ... Petitioner / Respondent / Accused

vs.

S.Krishna Ramanujam ... Respondent / Petitioner / Complainant

PRAYER: Criminal Revision petition filed, under Section 397(1) r/w 401 Cr.P.C., to call for the records pertaining to the impugned order in Cr.M.P.No.4350 of 2016 in C.C.No.211 of 2017, dated 22.09.2017 on the file of the learned Judicial Magistrate No.II, Sattur and set aside the same as abuse of process of law.

For Petitioner : Mr.R.Shankar Ganesh

O R D E R

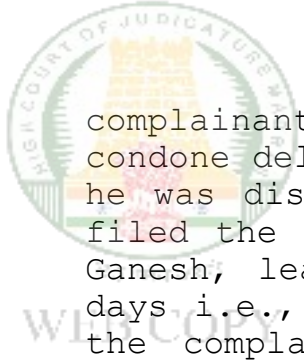
For the sake of convenience, the petitioner and the respondent herein are referred to as "the accused" and "the complainant" respectively in this order.

2. The complainant initiated a prosecution, under Section 138 of the Negotiable Instruments Act, against the accused before the learned Judicial Magistrate No.II, Sattur, with a delay of 44 days and to condone the said delay, the complainant filed Cr.M.P.No.4350 of 2016, under Section 142 of the Negotiable Instruments Act. The learned Judicial Magistrate ordered notice on the accused in the said miscellaneous petition and after hearing the complainant and the accused, by order dated 22.09.2017, condoned the delay. Aggrieved over the same, the accused is before this Court.

3. Mr.R.Shankar Ganesh, learned counsel for the accused, would submit that the very same complainant has set up another person, by name, Alagarsamy and initiated a similar prosecution with a delay of 52 days and in which also, the complainant therein has stated that he was physically indisposed. The learned counsel also submitted that the complainant had failed to explain the delay of six days out of 44 days and therefore, the Trial Court ought not to have allowed the condone delay application.

4. This Court gave anxious consideration to the submissions of the learned counsel for the accused.

5. Section 142 of the Negotiable Instruments Act empowers the Trial Court to condone the delay in launching prosecution under Section 138 N.I.Act. In this case, the delay is only 44 days. The



complainant has stated in the affidavit filed in support of the condone delay application that he was physically indisposed and that he was discharged from the Hospital on 05.08.2016 and that he had filed the complaint on 12.08.2016. The contention of Mr.R.Shankar Ganesh, learned counsel for the accused, is that the delay of six days i.e., from 05.08.2016 to 12.08.2016 has not been explained by the complainant and therefore, the Trial Court should not have allowed the condone delay application.

6. In the considered opinion of this Court, the submissions of the learned counsel for the accused cannot be countenanced for the simple reason that immediately after discharge from the Hospital, no person will go directly to the Court and lodge a complaint. He will only contact his Advocate and give instructions to him and thereafter, the Advocate will prepare the brief and file it before the Court concerned. These are all ordinary common course of natural events in relation to public and private business of which this Court can reasonably draw a presumption under Section 114 of the Evidence Act. That apart, whether the prosecution is mala fide in nature is a question of fact, which should be decided only during trial. Therefore, it is always open to the accused to contend that Alagarsamy has been set up by the complainant to harass him. In such view of the matter, this Court does not find any serious infirmity or illegality in the order passed by the Trial Court warranting interference of this Court.

7. In the result, the criminal revision is closed. Consequently, connected criminal miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Crl. side)

/True Copy/

Sub Assistant Registrar

To:

1 The Judicial Magistrate No.II, Sattur.

2 Do through The Chief Judicial Magistrate,
Virudhunagar.

+1cc to M/S.R.Shankar Ganesh, Advocate SR.No. 40401

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