



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2018

CORAM:

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Cr1.R.C (MD) No.534 of 2018

WEB COPY

J.Jayakumar

: Petitioner/Petitioner/Appellant

Vs.

G.Balaji

: Respondent/Respondent/Respondent

PRAYER: Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to set aside the order passed in Cr.M.P.No.826 of 2018 in Criminal Appeal S.R.No.1797 of 2018 on the file of the Principal Sessions Court, Trichy dated 18.06.2018 and allow the Criminal Revision Petition.

For Petitioner

: Mr.C.Vakeeswaran

For Respondent

: Mr.D.Senthil

ORDER

The revision petitioner is the complainant in S.T.C.No.1339 of 2010 on the file of the learned Judicial Magistrate No.5, Trichy.

2.The complainant's case is that when the case in respect of the cheque for Rs.5,00,000/- issued by the respondent herein, was posted for examining the witnesses on the side of the complainant, there was no representation on his behalf on 01.04.2013 and 12.04.2013. Recording his absence the trial Court has dismissed the complaint for non-appearance vide order dated 12.04.2013. Aggrieved by that, the complainant has preferred the appeal before this Court with the delay of 49 days. Both the matters were taken up for final disposal after five years of its filling. This Court found that the appeal against the order passed by the learned Judicial Magistrate No.5 in case arising out of 138 Negotiable Instruments Act, will lie only before the District Court and therefore, citing the Full Bench Judgment in S.Ganapathy Vs. N.Senthilvel, reported in 2016(3) MLJ Cr1 641, this Court has dismissed the appeal with liberty to the complainant to workout his remedy in the manner known to law. Pursuant to this order, the complainant/revision petitioner herein has preferred the appeal before the learned Principal Sessions Judge, Trichy with delay of 84 days by excluding the time consumed in preferring the appeal before the wrong forum.

3.When this application to condone delay of 84 days came up for hearing, the petitioner was not represented. After calling the case twice, the learned Principal Sessions Judge has dismissed the application to condone the delay in preferring the appeal.

Challenging the order, the present criminal revision case is filed.

4. The learned counsel appearing for the revision petitioner would submit that Section 385 Cr.P.C mandates the Court to hear the parties and give sufficient opportunities after calling the records. In this case, the lower appellate Court without affording opportunity and merely recording the absence of the revision petitioner had dismissed the petition. Therefore, the impugned order is liable to be set aside.

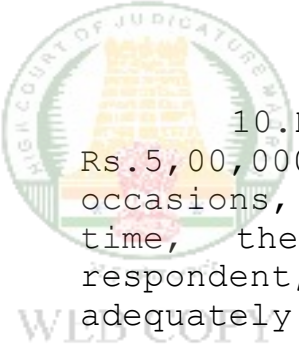
5. The learned counsel would also submit that the preamble of the order does not reflect the true facts of the case, which indicates non-application of mind by the appellate Court.

6. Per contra, the learned counsel appearing for the respondent would submit that the respondent had never borrowed the money or liable to pay any money to the complainant. The case itself has been initiated just to harass him. That is the reason why, the complainant is not ready to conduct the case. He wants to keep his frivolous case alive by preferring the appeal with enormous delay.

7. It is also contended by the learned counsel for the respondent that for the transaction which alleged to have taken place in the year 2010, the complainant herein was not ready to let in the evidence till 2013. Therefore, the learned Judicial Magistrate has dismissed the complaint for non-prosecution. Even thereafter, the complainant has not shown any interest to pursue the matter in time. After lapse of eight years if the respondent is forced to face the criminal prosecution, it will cause grave hardship and prejudice.

8. Considering the rival submissions and after perusal of the records, this Court finds that the complainant herein had failed to let in the evidence on 01.04.2013 and 12.04.2013, when the case was specifically posted for examination of witnesses. Therefore, the learned Judicial Magistrate has dismissed the complaint stating that the case is posted for evidence of the complainant for long time, but he has not come forward to conduct the trial. Quoting the non-progress in the trial, the trial Court has dismissed the complaint.

9. The further appeal has been preferred before this Court, which was not the appropriate forum. This has caused the delay of nearly 5 years. Now, when the appeal preferred before the learned Principal Sessions Judge with the delay of 84 days, at least then the complainant ought to have shown some serious interest in the case and should have pursued, it to logical conclusion. Unfortunately, the complainant has not done so.



10. However, since the cash involved in this case is Rs.5,00,000/-, the lapse on the part of the complainant on few occasions, should not cause grave prejudice to him. At the same time, the valuable right of conducting the trial by the respondent, who has now been put to hardship all along, should be adequately compensated for the same.

11. Therefore, this Court allow the criminal revision case and set aside the order dated 18.06.2018 passed in Cr.M.P.No.826 of 2018 by the learned Principal Session Judge, Trichy, dismissing the application to condone the delay of 84 days, on cost of Rs.10,000/-. The costs should be paid on or before 9th November 2018 before the First Appellate Court. On payment of such cost, the first appellate Court shall take the application for condone the delay and dispose the application on merits after affording opportunities to both the parties.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The Principal Sessions Court, Trichy
2. The Judicial Magistrate No.V,
Trichirappalli.

+1cc to Mr.C.Vakeeswaran, Advocate Sr.No.91208
+1cc to Mr.D.Senthil, Advocate Sr.No.91255

CP

VB/RSK/SAR1/02.11.2018/3P/5C

ORDER MADE IN
Cr1.R.C(MD)No.534 of 2018
23.10.2018