

HON' BLE SRI JUSTICE Dr. B. SIVA SANKARA RAO

CRIMINAL PETITION No.3663 of 2018

ORDER:

Impugning the order dated 16.02.2018 of the learned Metropolitan Sessions Judge, Hyderabad, in CrI.MP.No.3272 of 2017 in un-numbered cheque dishonour private complaint in Cr.A(S.R) No.12935 of 2017 in condoning the delay of 26 days in filing the revision against allowing of condonation of delay of 26 days, after hearing both sides, the learned Magistrate, by order, dated 21.07.2017 in CrI.MP.No.4126 of 2015 in C.C(S.R) No.912 of 2014 (C.C.No.659 of 2016), the present criminal petition is filed by the petitioners/ A1 to A3 against the complainant/ respondent No.1.

2. Heard learned counsel for the petitioners, learned counsel for the 1st respondent/complainant and learned Public Prosecutor representing the 2nd respondent/ State.

3. The very wording of Section 142(1)(b) proviso of the Negotiable Instruments Act is clear by amended Act 55 of 2002 w.e.f. 06.02.2003 that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period. The discretion to be exercised is a judicious one and not for the sake of mere asking, that too, without satisfied by giving reasons in the petition/ affidavit in support of it if any of

sufficient cause for not making a complaint within such period.

4. Coming to the impugned order of the learned Sessions Judge what is observed is 'it is not in dispute that the order of condoning of delay was passed after full-fledged enquiry. The respondent is asserting that accused got filed a petition under Section 317 Cr.P.C. on 1.9.2017 itself. Considering the fact that even though the revision petitioner knew about the order on 01.09.2017 itself, the delay cannot be condoned and accordingly, the petition is dismissed.'

5. No doubt, the order is *lacunae* one. However, whether the order of the learned Magistrate condoning the delay is sustainable or not to be considered more particularly for the reason that revision against the order of interlocutory in nature, otherwise, not maintainable from the very wording of Section 397 Cr.P.C.

6. Coming to the order of the learned Magistrate, dated 21.07.2017 in CrI.MP.No.4126 of 2015 in relation to the delay condonation of 26 days concerned, it is observed that earlier the petition to condone the delay was dismissed, as no sufficient ground shown. It was, after impugning the same before the High Court by virtue of the remand order of the High Court and from filing of documents such as medical prescription/certificate issued by the Osmania General

Hospital, tax invoice for repairs of the vehicle, vehicle registration certificate, resolution passed at general body meeting of Mega Home Improvement Private Limited, traffic 'e' challan print out, driving licence and photo of the complainant, the petition, after hearing both sides allowed on merits by a detailed order. In fact, the order particularly at para-9 speaks that the delay is not 26 days but 82 days. No doubt, the approach to be required is pragmatic as considered from expressions in para-7 of the said order. However, the learned Magistrate while condoning the delay by interfering with the accrued rights to the accused, after expiry of the period of limitation for non-filing of the complaint within one month from accrual of cause of action, by such interference, the accused should have been compensated by appropriated order.

7. Having regard to the above, the order of the learned Sessions Judge, dated 16.02.2018 in CrI.MP.No.3272 of 2017 is modified while confirming the order of the learned Magistrate in allowing the petition, however, by imposing costs of Rs.15,000/- (Rupees Fifteen thousand only) payable by the complainant to the accused before the lower Court within one week from the date of receipt of copy of this order, failing which the order dated 21.07.2017 in CrI.MP.No.4126 of 2015 passed by the learned Magistrate is

liable to be dismissed by virtue of this order in closing C.C. for non-condonation of the delay, consequently. If accused failed to receive the said amount, the learned Magistrate to send the same to the Army Welfare Fund. Needless to say, from the difficulty expressed by the petitioners for attending the Court regularly, liberty is given either to file application for one to represent others under Rule 37 of the Criminal Rules of Practice or to file special vakalat petitions under Section 205 Cr.P.C for considering the same with appropriate conditions, after hearing the complainant, by virtue of this order.

8. Accordingly, the Criminal Petition is partly allowed.

9. Consequently, miscellaneous petitions, if any shall stand closed.



JUSTICE Dr. B.SIVA SANKARA RAO

Date: 14.11.2018
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