

THE HON'BLE SRI JUSTICE P. KESHA RAO
CRIMINAL REVISION CASE NO. 2078 OF 2018

ORDER:

Heard the learned counsel for the petitioners.

2. The present Criminal Revision Case is filed against the orders passed in CrI.R.P.No.35 of 2018 dated 11.6.2018 on the file of the Court of Metropolitan Sessions Judge, Hyderabad, allowing the said revision and thereby condoning the delay of 28 days in filing a complaint under the provisions of Section 138 of Negotiable Instruments Act.

3. The facts in brief are that respondent No.1 herein filed a complaint vide C.C.Sr.No.4209 of 2017 against the petitioner herein for the offence under Section 138 of Negotiable instruments Act on the file of the Court of IV Additional Chief Metropolitan Magistrate, Hyderabad. However, since there was a delay of 28 days in filing the said complaint, respondent No.1 filed CrI.M.P.No.1613 of 2017 to condone the said delay in filing the complaint. The petitioners herein filed a counter, opposing the said petition stating that no valid reasons have been mentioned for condoning the delay; apart from that, no evidence has been adduced to the effect that he was on pilgrimage. After appreciating the matter, the Court below, dismissed the said petition by orders dated 4.12.2017.

Aggrieved by the same, respondent No.1 filed CrI.R.P.No.35 of 2018 on the file of the Metropolitan Sessions Judge, Hyderabad. Learned Metropolitan Sessions Judge, after hearing both the parties, allowed the said revision and condoned the delay by order dated 11.6.2018 and set aside the order dated 4.12.2017 passed in CrI.M.P.No.1613 of 2017 in C.C.Sr.No.4209 of 2017. Aggrieved by the said orders, the present Criminal Revision Case is filed.

4. Learned counsel for the petitioner would contend that the learned Metropolitan Sessions Judge has not considered the aspect of non filing of any documentary evidence to show that respondent No.1 herein was unable to file the complaint within the limitation period as he proceeded on pilgrimage. He also submitted that without there being any evidence to the effect that he was not in a position to file the complaint in time, the condonation of delay is not proper. The learned Metropolitan Sessions Judge also committed an error in allowing the Criminal Revision Petition on mere sympathy and also on the ground that there is a delay of only 28 days. Therefore, he seeks to set aside the orders passed by the learned Metropolitan Sessions Judge.

5. Having heard the learned counsel for the petitioners and from a perusal of the material on record, it is revealed that

respondent No.1 filed a complaint against the petitioners vide C.C.Sr.No.4209 of 2017 for the offence under Section 138 of Negotiable Instruments Act. However, as there was a delay of 28 days, he filed CrI.M.P.No.1613 of 2017. Learned IV Additional Chief Metropolitan Magistrate, Hyderabad, dismissed the said petition on the ground that no reasons have been mentioned by the petitioner therein/respondent No.1 to condone the delay. However, against the said order, respondent No.1 filed CrI.R.P.No.35 of 2018 before the learned Metropolitan Sessions Judge, Hyderabad. Learned Metropolitan Sessions Judge, after considering the rival contentions, was pleased to observe that in the light of the case law discussed and the explanation of respondent No.1 for the delay, i.e., he proceeded on a pilgrimage, was pleased to accept the version of respondent No.1 and condoned the delay. Further, the Court, after going through the record, was pleased to observe that the delay of 28 days is not abnormal. The reason mentioned by the petitioner/respondent No.1 for the delay is that he proceeded on a pilgrimage. When once respondent No.1 has given a reason in the affidavit filed in support of the petition for not filing the complaint on time, it cannot be said that respondent No.1 has not mentioned any reason for condonation of delay. That apart, when the delay is

not abnormal, the statutory right of respondent No.1 to prosecute the remedy under the provisions of Section 138 of Negotiable Instruments Act, cannot be deprived of.

6. Therefore, the Criminal Revision Case is dismissed.

Pending miscellaneous petitions, if any, shall also stand dismissed.

P. KESHA RAO,J

Date: 3.8.2018

KPM

