IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.02.2019

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.404 of 2016
&
Crl.M.P.No.2720 of 2016

P.Jayanthi

... Petitioner/Respondent/Accused

Vs.

E.Dhanapal

... Respondent/Petitioner/Complainant

PRAYER: This Criminal Revision Case has been filed Under Section 397 r/w 401 of Cr.P.C to set aside the order dated 26th August 2015 passed by the learned District Munsif, Ranipet at Vellore District in C.M.P.No.2719 of 2013 condoning the delay of 81 days in filing the complaint under Section 138 of the Negotiable Instruments Act.

For Petitioner : Mr.KA.Thangavelu
For Respondent : Mr.S.Sankar

O R D E R

This Criminal Revision Case has been filed by the petitioner under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 26th August 2015 passed by the learned District Munsif, Ranipet at Vellore District in C.M.P.No.2719 of 2013 condoning the delay of 81 days in filing the complaint under Section 138 of the Negotiable Instruments Act.

2.The respondent filed a private complaint under Section 200 Cr.P.C. for the offences under Section 138 of the Negotiable Instrument Act against the petitioner for dishonouring of cheque for which there was a delay of 81 days in filing the private complaint and that petition was taken on file by the learned Magistrate in Crl.M.P.No.2719 of 2013 and the same was allowed. Aggrieved by the said order, the revision petitioner / accused is before this Court.

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3.The learned counsel appearing for the petitioner would submit that after receipt of the statutory notice, the respondent / complainant has not filed a complaint in time and there was a delay of 81 days in filing the complaint, for which, the respondent has given only bald reasons that he was not feeling well but the respondent / complainant in his evidence has stated that except asthma, he is not having any other ailment. Therefore, the reasons stated in the affidavit is not sufficient to set aside the order of condone delay. Accordingly, prays for setting aside the order passed by the learned Magistrate in Crl.M.P.No.2719 of 2013.

4.The learned counsel for the respondent /complainant would submit that he is aged about 70 years and due to old age, health condition, without any sort of assistance, the respondent / complainant could not move anywhere. The revision petitioner/ accused also requested the respondent / complainant not to prefer any case before any Court. Believing the words of the revision petitioner, the respondent / complainant waited and thereafter filed a complaint with delay of 81 days. The learned Magistrate considered the plea of the respondent and rightly condoned the delay and allowed the petition, which does not warrant any interference of this Court. Accordingly, prays for dismissal of the revision.

5.Heard both sides. Perused the records.

6.Though the petitioner filed a petition to condone the delay of 81 days in filing the complaint for the offence under Section 138 of Negotiable Instrument Act, the respondent / complainant stated that the delay is only due to old age and health condition and also the revision petitioner requested the respondent not to file any case.

7.Even though it is the discretionary power of the Court to condone the delay, while exercising the power, the Court has to exercise the power judiciously not arbitrarily. The reasons stated in the affidavit, it is only bald in nature and he has not specifically stated what is the aliment, whether he was in bed ridden or not. Further he has also stated that at the request of the revision petitioner he did not file a complaint. He has not stated then why he has filed the complaint subsequently with a delay of 81 days which has also not been properly explained. Under these circumstances, the order passed by the learned District Munsif, Ranipet is liable to be set aside.

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8.Accordingly, this Criminal Revision Petition is allowed. The order passed by the learned District Munsif, Ranipet at Vellore District in C.M.P.No.2719 of 2013 condoning the delay of 81 days in filing the complaint under Section 138 of the Negotiable Instruments Act is set aside. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

kas

To

The District Munsif, Ranipet
Vellore District

+2 CCS to Mr.KA.Thangavelu,Advocate sr 16432.
+1 CC to Mr.S.Sankar , Advocate sr 16263(23/04/2019)

Crl.R.C.No.404 of 2016
&
Crl.M.P.No.2720 of 2016

SSD(CO)
SP(25/03/2019)

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