

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.587 of 2018 and
Crl.M.P.No.6897 of 2018

Booma Devi

...Petitioner

Vs.

Gagan Bothra

...Respondent

Prayer: This Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure to call for the records in Crl.M.P.No.10767 of 2017 in C.C.SR.Unnumbered/2017 on the file of the learned Fast Track Court - IV, George Town, Chennai and set aside the order dated 18.04.2018 in Crl.M.P.No.10767 of 2017.

For Petitioner: Mr.M.Murali

For Respondent: Mr.M.Gagan Bothra
Party - in - Person

O R D E R

The petitioner is accused and respondent is complainant. The respondent filed a private complaint for the offence under Section 138 of Negotiable Instruments Act against the petitioner before the learned Fast Track Court - IV, George Town, Chennai, which was taken on file in C.C.SR.Unnumbered/2017. In the said case, the revision petitioner filed a private complaint with the delay of 120 days and filed an affidavit with the delay of 119 days. The reason stated for the delay is that the revision petitioner herein made a false complaint against the respondent herein, therefore, he was arrested and detained in the custody. The revision petitioner submits that even according to the respondent herein, he was released on bail, due to the arrest, he was mentally disturbed, therefore, he could not file the petition on time. The learned Magistrate accepted the reasons and condoned the delay.

2. Aggrieved against the above said order dated 18.04.2018, the accused has preferred the present criminal revision.

3. The learned counsel for the petitioner/accused would submit that the respondent/complainant appeared in the very same Court for some other proceedings. Therefore, the reason stated in the affidavit is not acceptable one and also placed his reliance on the Judgment of the Hon'ble Apex Court and prays to set aside the order of the trial Court.

4. The respondent/complainant appeared party - in - person and submit that no proof has been filed by the petitioner for his appearance in the same Court on the said date of proceedings. Whereas, in this case the petitioner appeared in the very same Court on the same day for other proceedings. Since, he was mentally not prepared to conduct the case and he sought for adjournment and therefore, the appearance in the other case is not a bar in allowing the petition to condone the delay.

5. Heard the learned counsel appearing for the revision petitioner and the respondent/party - in - person and perused the materials available on record.

6. Admittedly, the respondent is in custody from 25.07.2017 and thereafter he was released on bail, even though he appeared in other proceedings for conducting the case or for giving the evidence. The learned counsel for the petitioner stated that during the relevant period of time, the respondent appeared in several proceedings before various Courts, therefore the reason stated by the respondent is not acceptable one. The respondent/party - in - person appeared and stated that he was not in a position to say anything, since he was mentally disturbed and could not conduct the case, the cheque was seized by the Police and it was not in his custody. Therefore, he could not file the complaint in time. The learned counsel for the petitioner would submit that the length of the delay is not the matter and only the reason given in affidavit for delay has to be considered and the reason stated in the affidavit is sufficient enough to condone the delay. It is not disputed, that the respondent was arrested and he was in custody for some period of time and subsequently he was released. In the above circumstances, the learned Magistrate has condoned the delay. This Court does not find any perversity in the order dated 18.04.2018 passed by the learned Magistrate and the same does not warrants any interference. Condoning the delay is discretionary power of the Court. This Court does not find any arbitrariness in exercising the discretionary power of the Court below. Under the said circumstances, this Court does not find

any perversity in the order passed by the trial Court.

7.In the result, the Criminal Revision Petition stands dismissed. No costs. Consequently, the connected Criminal Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

rna

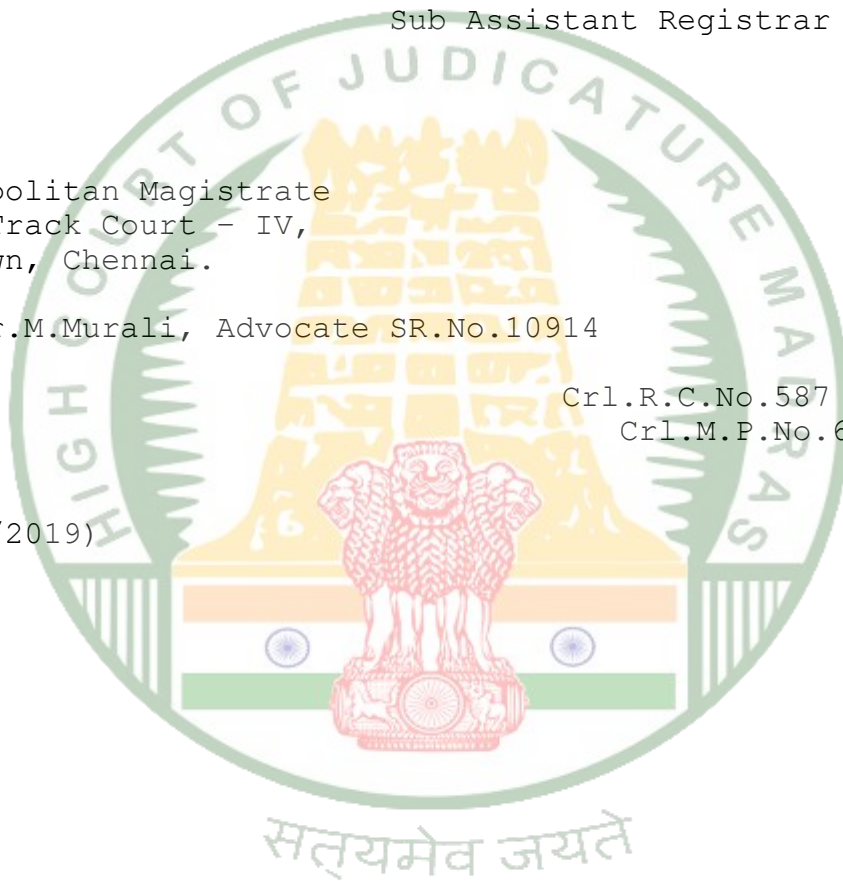
To

The Metropolitan Magistrate
The Fast Track Court - IV,
George Town, Chennai.

+1cc to Mr.M.Murali, Advocate SR.No.10914

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KJI (CO)
GMY (14/03/2019)



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