

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2019

CORAM

THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

Cr1.Rc.No.755 of 2018

R.Prabakaran

... Petitioner

Vs

B.Geetha @ Sangeetha

... Respondent

The Criminal Revision Case filed under Section 397 and 401 of Cr.P.C, to call for the records pertaining to C.M.P.No.342 of 2018 passed by the Fast Track Court, Magistrate Level No.II, Poonamallee, Tiruvallur District and set aside the order dated 09.04.2018.

For Petitioner : Mr.K.Balasubramaniam

For Respondent : No Appearance

O R D E R

This Revision has been filed by the petitioner to call for the records pertaining to C.M.P.No.342 of 2018 passed by the Fast Track Court, Magistrate Level No.II, Poonamallee, Tiruvallur District and to set aside the order dated 09.04.2018.

2. The petitioner is the complainant and the respondent is the accused. The respondent has borrowed a sum of Rs.2,50,000/- from the complainant for his family expenses and he promised to repay the same. In order to repay the said loan amount the accused has issued a post dated cheque in favour of the petitioner. The petitioner has deposited the cheque in his Bank for encashment and the same was returned with an endorsement as 'funds insufficient'. Thereafter, the petitioner has issued a statutory notice to the accused on 20.03.2017, demanding to pay the money. The respondent has received the notice and failed to repay the money to the petitioner. Hence, he filed a private complaint against the respondent under section 200 of Cr.P.C for the offences under Section 138 of the Negotiable Instruments Act, before the learned Fast Track Magistrate Level No.II,

Poonamallee. Since, he could not file complaint in time, he filed a petition to condone the delay of 265 day in filing the complaint before the Magistrate. That petition was dismissed by the learned Magistrate in C.M.P.No.342 of 2018 dated 09.04.2018. As against which the petitioner has preferred this present revision before this Court.

3. The learned counsel for the petitioner would submit that his father was aged person and he is also having a kidney problem. Therefore, he produced the doctor certificate which was marked as Ex.P7 to that effect. The Magistrate failed to consider the reason for not filing the complaint in time. Initially notice was served to the respondent and she also appeared before the Magistrate. Subsequently, the respondent has not filed the counter and the learned Magistrate has not considered the documents produced by the revision petitioner for ailment. The petitioner stated that the Doctor advised him to take treatment in Kerala. Hence, that is the main reason for not filing a complaint in time.

4. Although, notice has been served on the respondent through Court and privately and name has also been printed in the cause list, there is no appearance on behalf of the respondent/accused.

5. On a reading of the entire records, it is seen that the learned Magistrate has stated that the reason assigned by the petitioner for condoning the delay is not satisfactory and sufficient. The delay of 265 days is huge, enormous and inordinate. Merely stating the reason without any proof is not acceptable. The documents relied on by the petitioner are not sufficient for not to file a case within a limitation period. The actual number of days for delay is 251 days whereas the petitioner states 265 days. Though the delay is more than actual delay the conduct of petitioner is affected by want of diligent and vigilant. So a person who is not bonafide, diligent and vigilant is not entitled for discretionary relief. Therefore, condoning the delay is discretionary power of the Court. While exercising the discretionary power, the Magistrate has dismissed the petition. The revision Court has to see whether the magistrate has exercised his discretionary power judicially or arbitrarily. On reading of the affidavit filed by the petitioner, it is seen that the trial court has considered the reason and found the same not satisfactory. This Court finds there is no perversity in passing the order by the Magistrate and finds no merit in the Revision Petition, therefore, the Revision is liable to be dismissed.

In the result, the Criminal Revision is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

jas/rli

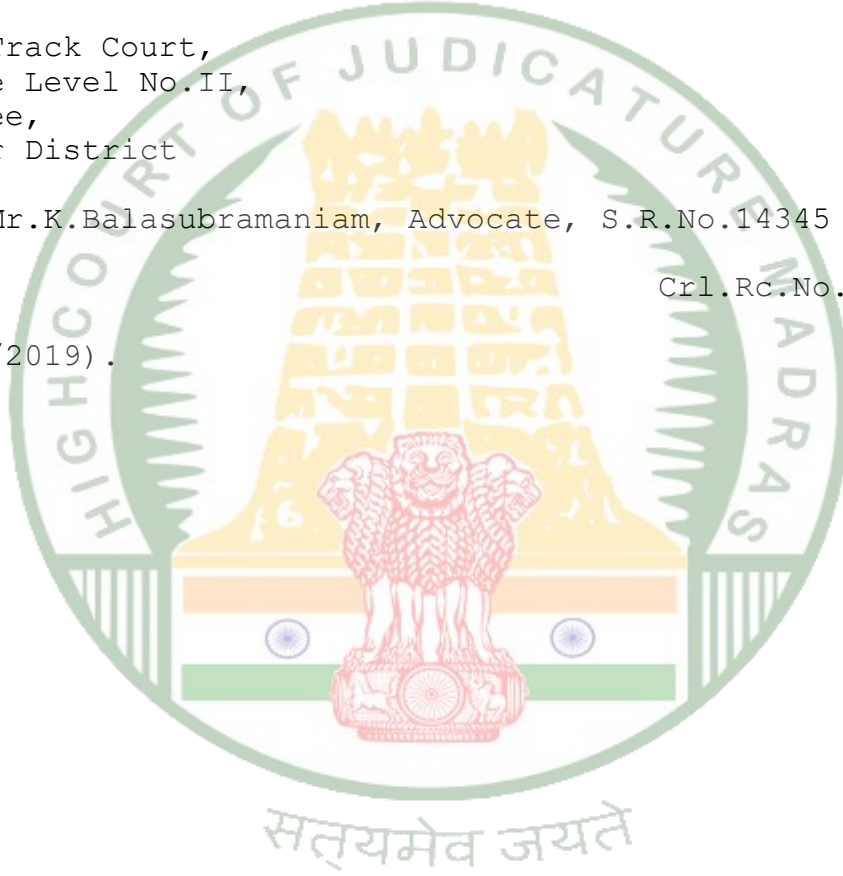
To

The Fast Track Court,
Magistrate Level No.II,
Poonamallee,
Tiruvallur District

+1 cc to Mr.K.Balasubramaniam, Advocate, S.R.No.14345

CrI.Rc.No.755 of 2018

BS (CO)
SSM(29/04/2019) .



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