

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.10.2019

PRONOUNCED ON : 24.10.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.R.C.Nos.127 to 131 of 2014

John Philip .. Petitioner/Complainant
in all Criminal Revision

Vs

Anish Kumar
Proprietor - Compu Skill
448, L.S.R.T. Complex,
Sathy Road,
Ganapathy,
Coimbatore.

.. Respondent/Accused
in all Criminal Revision

Crl.R.C.No.127 of 2014 preferred under Section 397 and 401 Cr.P.C. to set aside the order dated 05.09.2011 passed by the Judicial Magistrate No.II, Coimbatore in Crl.M.P.No.3896 of 2011.

Crl.R.C.No.128 of 2014 preferred under Section 397 and 401 Cr.P.C. to set aside the order dated 05.09.2011 passed by the Judicial Magistrate No.II, Coimbatore in Crl.M.P.No.3899 of 2011.

Crl.R.C.No.129 of 2014 preferred under Section 397 and 401 Cr.P.C. to set aside the order dated 05.09.2011 passed by the Judicial Magistrate No.II, Coimbatore in Crl.M.P.No.3898 of 2011.

Crl.R.C.No.130 of 2014 preferred under Section 397 and 401 Cr.P.C. to set aside the order dated 05.09.2011 passed by the Judicial Magistrate No.II, Coimbatore in Crl.M.P.No.3900 of 2011.

Crl.R.C.No.131 of 2014 preferred under Section 397 and 401 Cr.P.C. to set aside the order dated 05.09.2011 passed by the Judicial Magistrate No.II, Coimbatore in Crl.M.P.No.3897 of 2011.

For Petitioner : Mr.M.N.Balakrishnan
in all Crl. Revision

For Respondent : Mr.S.Gunalan
in all Crl. Revisi

C O M M O N O R D E R

These Criminal Revisions have been preferred challenging the orders dated 05.09.2011 passed by the Judicial Magistrate No.II, Coimbatore in Crl.M.P.Nos.3896, 3899, 3898, 3900 and 3897 of 2011.

2.Since the parties are same in all these criminal revisions and the issue is stereotype, a common order is passed.

3.The complainant is the revision petitioner and the accused is the respondent herein. The complainant filed five complaints before the Judicial Magistrate No.II, Coimbatore under Section 138 of the Negotiable Instruments Act, 1881 (for brevity "the NI Act"), against the accused, each with a delay of 85 days, for condoning which, he filed individual petitions in each case under the proviso to Section 142(1) of the NI Act. In support of the petitions, he also filed affidavits bereft of any reason. The petitions were numbered and after hearing either side, the learned Judicial Magistrate No.II, Coimbatore, has dismissed them on 05.09.2011, aggrieved by which, the complainant has preferred these Criminal Revisions.

4.Heard Mr.M.N.Balakrishnan, learned counsel for the petitioner/ complainant and Mr.Kumarasamy, learned counsel for the respondent/accused.

5.In the affidavits filed in support of the condonation of delay petitions, the complainant has stated as follows :

"4.I further submit that I have filed the complaint under Section 138 of N.I.Act after lapse of days from the date of receipt of statutory Notice within a month in other words the main complaint ought to be presented before the Honourable Court on or before but there is a delay of 85 days in presenting this application. It is purely due to me. I am unable to come and sign the complaint in time and cannot present the same before this Honourable Court."

6.The proviso to Section 142(1) of the NI Act reads as follows :

"142.Cognizance of offences

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 -

- (a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;
- (b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:
[PROVIDED 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.]
- (c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138."

(emphasis supplied)

7.A reading of the above provision shows that the Court has the power to condone the delay in filing the complaint, where sufficient cause is shown. In this case, the complainant has merely stated that the delay is purely on his part, since he was unable to come and sign the complaint and present the same before the Court. The fact that the complaint was not filed within the prescribed time, was obviously due to the failure of the complainant to file it within time. The law requires the complainant to assign some reason for failing to file the complaint within time. In the absence of any reason in the affidavit filed by the complainant qua the delay, the Court cannot give a finding that there was sufficient cause. Therefore, the order of the trial Court dismissing the petitions cannot be said to be perverse.

In the result, these criminal revisions are dismissed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gya

To

1.The Judicial Magistrate No.II,
Coimbatore.

<https://hcservices.ecourts.gov.in/hcservices/>

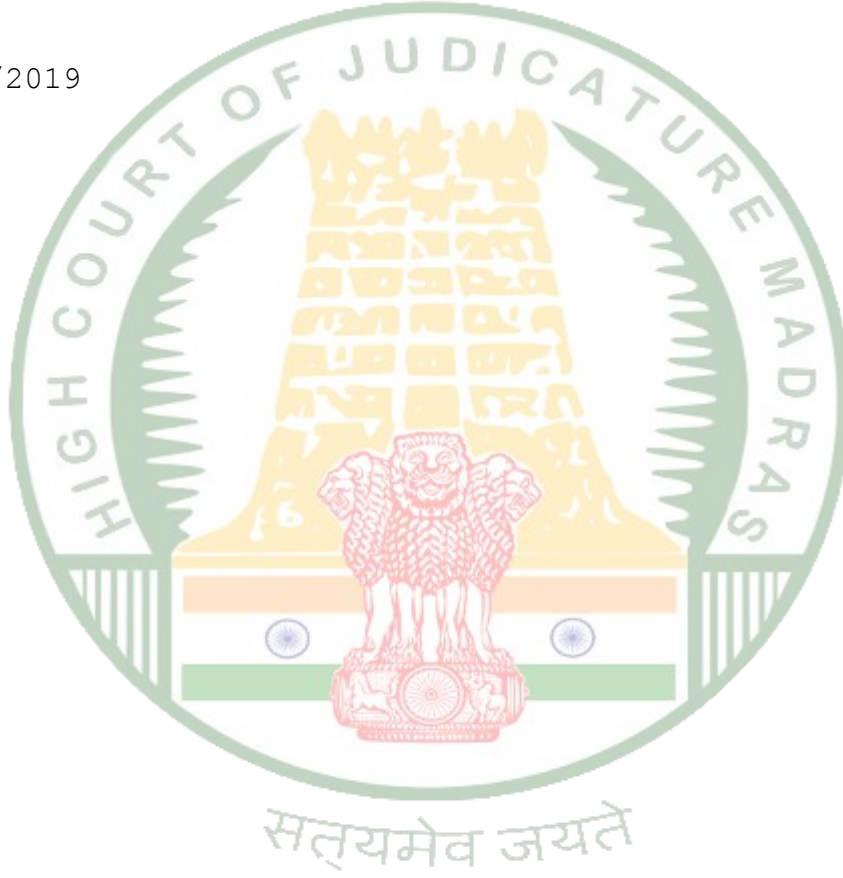
2.The Chief Judicial Magistrate,
Coimbatore.

+2cc to Mr.S.Gunalan, Advocate Sr.89260, 88868

+1cc to Mr.M.N.Balakrishnan, Advocate Sr.88078

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srg 26/11/2019



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