

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Cr1.O.P.No.17335 of 2019

Sri Vari Finance rep.
by S.Prakaash

... Petitioner

Vs.

A.Sellamuthu

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure seeking to set aside the order dated 24.05.2019 in Cr.M.P.No.1250 of 2017 on the file of the Judicial Magistrate No.IV, Court, Tiruppur.

For Petitioner : Mr.K.Sudhakar
For Respondent : Mr.S.B.Viswanathan

ORDER

This petition has been filed challenging the order passed by the court below in dismissing the petition filed to condone the delay of 47 days in preferring a complaint under Section 138 of the Negotiable Instruments Act.

2. The petitioner had filed a complaint before the court below against the respondent for an offence under Section 138 of the Negotiable Instruments Act. The complaint was filed with a delay of 47 days. The reasons given by the petitioner was that the cheque was misplaced in the office of the petitioner and therefore, it took some time to trace the cheque and therefore, it had resulted in a delay of 47 days in filing the complaint. The court below had dismissed the petition on the ground that no proper explanation was given by the petitioner with regard to the reasons assigned for the delay and each day's delay has not been properly explained.

3. The learned counsel for the petitioner submitted that the court below went wrong in dismissing the petition and the court below expected the petitioner to explain as to how the cheque went missing in the office of the petitioner. The court below had considered the petition in a very hyper technical manner and the petitioner must be allowed to contest the case on

merits. The learned counsel further submitted that the cheque amount is for a sum of Rs.8,00,000/-.

4. The learned counsel appearing on behalf of the respondent submitted that the petitioner has taken a stand before the court below as if the cheque was misplaced in the office of the petitioner. However, in the present petition, a stand has been taken by the petitioner as if the cheque was misplaced in the office of the Advocate. Therefore, the learned counsel submitted that the petitioner is taking different stands before different courts and therefore, the order passed by the court below should not be interfered.

5. This Court has carefully considered the submissions made on either side and the materials available on record.

6. It is true that the petitioner has taken a completely new stand before this Court as if the cheque was misplaced in the office of the Advocate. However, taking into consideration the value of the cheque which is nearly Rs.8,00,000/- and also considering the number of days of delay which is only 47 days, this Court does not want to dismiss this petition for the mistake of the Advocate in adding the ground as if the cheque was misplaced in the office of the Advocate. This Court wants to give an opportunity to the petitioner to contest the case on merits.

7. In view of the above, the order passed by the court below in Cr.M.P.No.1250 of 2019 dated 24.05.2019 is hereby set aside. The petitioner is directed to pay a cost of Rs.10,000/- to the respondent within a period of 10 days from the date of receipt of a copy of this Order. On such payment, the petitioner shall take an acknowledgement of the respondent and the same shall be filed before the court below. The court below on receipt of the memo and acknowledgment, shall take the complaint on file and shall proceed further in accordance with law. It is made clear that if the cost is not paid within the time stipulated by this Court, the order passed by the court below in Cr.M.P.No.1250 of 2019 dated 24.05.2019, will stand restored.

8. The Criminal Original Petition is disposed of, accordingly.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

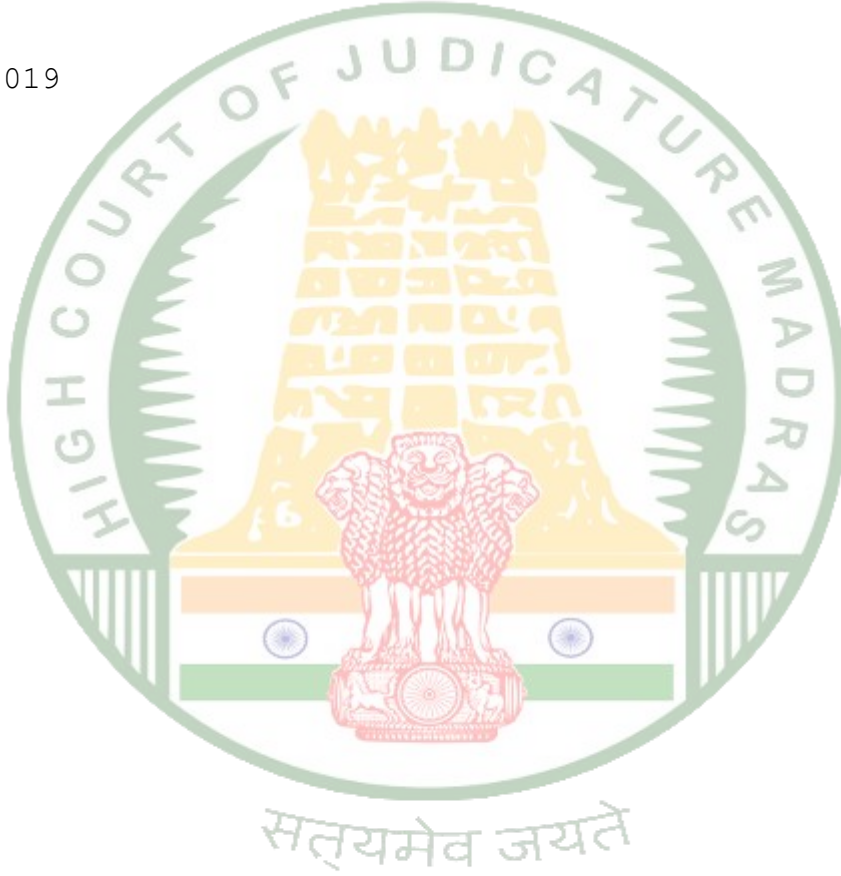
1. The Public Prosecutor,
High Court, Madras.
2. The Judicial Magistrate No.IV,
Tiruppur.

+1cc to Mr.K.Sudhakar, Advocate, S.R.No.65758

+1cc to Mr.S.B.Viswanathan, Advocate, S.R.No.65605

CrI.O.P.No.17335 of 2019

SVI (CO)
CS/18/09/2019



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