

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

Crl.O.P.No.21417 of 2017
and Crl.M.P.No.12604 of 2017

R.Jayarani

... Petitioner

Vs.

V.Sivadoss

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records and set aside the order passed by the Judicial Magistrate, Fast Track Court No.I, (Magisterial Level), Erode, in C.M.P.No.2761 of 2017, dated 18.05.2017, wherein the learned Judicial Magistrate had condoned the delay of 48 days in preferring the complaint under Section 138 of the Negotiable Instruments Act and confirmed by the Additional Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Erode, in Criminal Revision Petition No.35 of 2017, dated 30.08.2017 and allow this petition.

For Petitioner : M/s.S.Rajeni Ramadass

For Respondent : M/s.I.C.Vasudevan

ORDER

This petition has been filed challenging the order passed by the Court below in confirming the order passed by the trial Court in condoning the delay of 48 days in filing the complaint for an offence under Section 138 of the Negotiable Instruments Act.

2. The petitioner has been shown as an accused in the complaint filed before the Court below for an offence under Section 138 of the Negotiable Instruments Act. The complaint was filed with a delay of 48 days and therefore, the petitioner filed a petition to condone the delay.

3. The learned Judicial Magistrate, Fast Track Court No.I, (Magisterial Level), Erode, by an order dated 18.05.2017, condoned the delay after finding that the respondent has given sufficient cause for the delay.

4. This was challenged by way of filing the revision before the Court below and the Court below confirmed the order passed by the trial Court and aggrieved by the same, the present petition has been filed before this Court.

5. The learned counsel for the petitioner submitted that the respondent has not shown sufficient cause for the delay. The learned counsel submitted that even though the respondent claims to have suffered from Jaundice, there were absolutely no material to prove the same. The learned counsel further submitted that during the relevant point of time, the respondent has also given a complaint and therefore the very ground taken for condoning the delay in filing the complaint is false. This fact has not been taken note of by the trial Court.

6. The learned counsel for the petitioner further submitted that the revision Court had dismissed the petition on the ground that the accused cannot maintain a revision and he does not have locus standi to challenge the order passed by the trial Court, in condoning the delay in filing the complaint.

7. The learned counsel for the respondent submitted that the Court below has applied its mind and has condoned the delay and there are no grounds to interfere with the same. The learned counsel further submitted that the other grounds raised by the accused/petitioner are not relevant for the purpose of considering the condone delay petition.

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

9. It is true that the revision Court was wrong in finding that the petitioner does not have locus standi to challenge the order passed by the trial Court. The said finding of the revision Court is unsustainable.

10. The delay involved in this case is 48 days in filing the complaint. The delay is not enormous and the trial Court has applied its mind, while passing the order. This Court does not find any infirmity in the order passed by the trial Court. The petitioner has to necessarily face the proceedings on merits and the proceedings cannot be stalled at the stage of condoning the delay in filing the complaint.

11. This Court does not find any illegality or infirmity in the order passed by the Court below and there are no grounds to interfere with the order passed by the trial Court.

12. It is also brought to the notice of this Court that the Court below has already taken cognizance of the complaint and the case is now at the stage of trial.

13. The learned counsel for the petitioner requested this Court to dispense with the appearance of the petitioner before the Court below. Taking into consideration the facts and circumstances of the case, the presence of the petitioner is dispensed with and she shall be represented by a counsel, who shall cross examine the witnesses on the same day, they are examined in Chief. The petitioner shall be present before the Court below at the time of questioning under Section 313 Cr.P.C and at the time of passing of the final judgment.

14. In the result, this Criminal Original Petition is dismissed and the Court below is directed to complete the proceedings in S.T.C.No.186 of 2017, on the file of the Judicial Magistrate, Fast Track Court No.I, (Magisterial Level), Erode, within a period of four months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate,
Fast Track Court No.I, (Magisterial Level),
Erode.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Rajeni Ramadass, Advocate SR.No.65980

Cr1.O.P.No.21417 of 2019

MP(CO)
GMY(25/10/2019)