

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 13.06.2019
CORAM
THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH
CRL.O.P.No.26124 of 2017

Deeja

... Petitioner

Vs.

Mr.Hari Govind

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the order passed in Crl.M.P No.8178 of 2015 dated 30.06.2016 by the Principal Judge, City Civil Court, Chennai in unnumbered Criminal Appeal against C.C. No.4855 of 2011 on the file of the Metropolitan Magistrate, Fast Track Court at Magistrate Level-II, Egmore, Chennai.

For Petitioner : Mr. S.C.Vishwanth

ORDER

This Criminal Original Petition has been filed aggrieved by the dismissal of the condone delay petition filed by the petitioner to condone delay in filing the appeal against the judgement of conviction and sentence passed by the trial Court for an offence under Section 138 of the Negotiable Instruments Act.

2. The petitioner faced trial for an offence under Section 138 of Negotiable Instruments Act and the trial Court, by judgment dated 05.09.2014 sentenced the petitioner to undergo simple imprisonment for a period of six months and to pay a compensation of Rs.4,00,000/-. Aggrieved by the same, the petitioner filed an appeal with a delay of 241 days. Notice was ordered in the said petition. Ultimately, since batta was not filed and the petitioner did not take effective steps to serve the respondent, the condone delay petition was dismissed by an order dated 30.06.2016.

3. The learned counsel for the petitioner submitted that the respondent is not available in the address given by him in the complaint and the petitioner is not in a position to ascertain the correct address of the respondent. The learned counsel further submitted that the petitioner is a lady and therefore, if ultimately, she does not challenge the judgment of the trial Court, she will be secured and made to suffer the sentence and therefore, the petitioner has to necessarily challenge the

judgment of the trial Court and therefore, an opportunity must be given to the petitioner to prosecute the appeal.

4. Several steps were taken to serve the respondent and till today, the service has not been completed. Even otherwise, this petition can be considered even without notice to the respondent since the condone delay petition has been dismissed only for default and not on merits.

5, The order passed by the Court below dated 30.06.2016, made in Crl.M.P.No.8178 of 2015 is hereby set aside. The Court below is directed to restore back the petition and give opportunity to the petitioner to take notice to the respondent in the condone delay petition and thereafter, permit the petitioner to prosecute the main appeal.

6. The petitioner is directed to deposit a sum of Rs.80,000/- in C.C.No.4855 of 2011, on the file of the Metropolitan Magistrate, Fast Track Court at Magistrate Level-II, Chennai within a period of four weeks from the date of receipt of copy of this order. The said deposit shall be taken into consideration by the appellate court at the time of considering the suspension of sentence application.

7. In the result, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Judge,
City Civil Court, Chennai.

2. The Metropolitan Magistrate,
Fast Track Court at
Magistrate Level-II, Egmore,
Chennai.

+1 cc to M/s.S.C.Vishwanath, Advocate, Sr.No. 48741

CRL.OP.No.26124 of 2017

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CSL/11.07.2019