

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1375 of 2018

M/s.Muktha Laboratories Private Ltd.,
Rep. by its Assistant Manager - Accounts,
Mr.R.Ramesh
No.2/296, DRR Avenue, Behind AUDCO Nagar,
Kattupakkam,
Chennai-600 056.

...Petitioner/Complainant

-Vs-

M/s.Amman Agencies,
Rep. by its Proprietor,
Mr.R.Swaminathan,
No.33, South Krishnan Koil 4th Lane,
Pandia Vellalar Street,
Madurai-625 001.

...Respondent/Accused

This Criminal Revision Petition is filed under Sections 397 read with Section 401 of Cr.P.C. praying to set aside the order of dismissal of the condone delay petition filed in Crl.M.P.No.2252 of 2018 along with unnumbered Criminal Complaint under Section 138 of Negotiable Instrument Act in Un.STC.SR.No.3691 of 2018 passed by the Judicial Magistrate, Fast Track Magisterial Level II, Poonamallee, Thiruvallur District by order dated 30.08.2018.

For Petitioner : Mr.M.L.Sripathi

For Respondent : Mr.V.Pavel

सत्यमेव जयते
O R D E R

This criminal revision has been filed to set aside the order in Crl.M.P.No.2252 of 2018, along with the unnumbered Criminal Complaint under Section 138 of Negotiable Instrument Act in Un.STC.SR.No.3691 of 2018, passed by the learned Fast Track Magisterial Level II, Poonamallee, Thiruvallur District, dated 30.08.2018.

2. The revision petitioner is the complainant and the respondent is the accused. The petitioner herein had filed a complaint against the respondent under Section 138 of Negotiable Instruments Act before the learned Magistrate, Fast Track Court,

Magisterial Level II, Poonamallee, Tiruvallur District, in which the petitioner has filed a petition in C.M.P.No.2252 of 2018 for condoning the delay of 12 days in filing the petition. The learned Magistrate has dismissed the petition. Therefore, the petitioner has come with the present revision before this Court.

3. The learned counsel appearing for petitioner would submit that the petitioner has supplied their products to the respondent company. After giving credit to the payments made by the accused, there is still a sum of Rs.2,44,025/- due and payable by the accused. The petitioner approached the respondent to settle the dues, for which the respondent has issued a cheque dated 08.02.2018, bearing No.614592 for a sum of Rs.2,44,025/-. As per the instruction given by the respondent, the petitioner has deposited the cheque in his bank and the same was returned with an endorsement 'Exceeds Arrangement'. On 06.03.2018, the petitioner has sent a statutory notice to the respondent, calling upon him to pay the balance amount. The respondent has not paid the money and sent an evasive reply dated 21.03.2018. Therefore, the complainant filed a private complaint before the learned Judicial Magistrate with 12 days delay. The reason of the delay is that Mr.Ravichandran, who was incharge, has resigned his job on 07.03.2018 and subsequently, he was relieved by the complainant company and thereafter the complainant has nominated the above work for collection to the Assistant Manager-Accounts, by authorization dated 20.04.2018 and when the Assistant Manager-Accounts, has approached the advocate for filing the Criminal complaint, he was informed that there is a delay of 12 days in filing the complaint. Hence the learned counsel prays to set aside the order of the Court below.

4. The learned counsel for the respondent would submit that the contention raised by the learned counsel for the petitioner that the former sales Manager M.Ravichandran had resigned from the petitioner's company because of pressure given by the petitioner. The said Ravichandran received the alleged cheques from the respondent as caution deposit, at the time of appointing the respondent as super stockiest. The said Ravichandran knows about the promise to compensate the loss incurred by the petitioner's company. The petitioner compelled him to falsify the accounts and suppress the real fact. On refusal, he was terminated from the service. Therefore, the learned Magistrate has rightly dismissed the petition it does not warrants interference.

5. Heard the learned counsel appearing for the petitioner as well as the respondent and perused the materials placed on record.

6. On a perusal of the records, it is clear that the petitioner is Limited company and one R.Swaminathan is proprietor of Amman Agencies. There was a business transaction between them. The petitioner has clearly stated the reason for the delay. There is only 13 days delay in filing the complaint and the petitioner has given the reason for the delay.

7. Condoning the delay is discretionary power of the Court. While exercising the discretionary power, the Magistrate has dismissed the petition. This Court exercising revisionary power has to see whether the magistrate has exercised his discretionary power judiciously or arbitrarily. On a reading of the affidavit filed by the petitioner, it is seen that there is acceptable reason assigned by the revision petitioner for filing the complaint with the delay of 12 days. The trial Court has not given sufficient and sound reasons to dismiss the petition filed by the petitioner. This court is inclined to set aside the order of the learned Judicial Magistrate in C.M.P.No.2252 of 2018 in UN.S.T.C.No.SR3691 of 2018. The learned Judicial Magistrate, FTC, Magisterial Level-II, Poonamallee, Tiruvallur is directed to take the complaint on file, if it is otherwise in order and proceed with the complaint in accordance with law.

8. In the result, the Criminal Revision is allowed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rli

To

1.The Judicial Magistrate,
Fast Track Court, Magisterial Level II,
Poonamallee, Thiruvallur District

+1cc to M/s.M.L.Sripathy, Advocate sr.23095

Cr1.R.C.No.1375 of 2018

nr 16/05/2019