

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1405 of 2018
and
Crl.M.P.No.16350 of 2018

C.Selvaraj ... Petitioner

Vs.

M. Varatharajan ... Respondent

Prayer:

Criminal Revision case filed under Sections 397 and 401 of Criminal Procedure Code, to call for the records in Crl.M.P.No.1556 of 2017, dated 06.08.2018 on the file of Principal District and Sessions Judge, Tiruppur and to set aside the same.

For Petitioner : Mr.M.K.Vijayaraghavan

For Respondent : Mr.Kaviarasan

ORDER

This Criminal Revision Case has been filed to set aside the order in Crl.M.P.No.1556 of 2017, dated 06.08.2018 passed by the learned Principal District Judge, Tiruppur.

2. The respondent/complainant had filed a private complaint against the revision petitioner under Section 200 Cr.P.C., for the offence under Section 138 of the Negotiable Instruments Act, [hereinafter referred to 'NI Act'] before the learned Judicial Magistrate No.1, Udumalpet, Tiruppur District in C.C.No.148 of 2014.

3. After completing the legal formalities, the learned Judicial Magistrate -I, Udumalpet, has taken cognizance of the complaint. After the trial, the complaint was dismissed and the petitioner was acquitted. Against which the respondent has preferred an appeal before the learned Principal District and Sessions Judge, Tiruppur, and there was a delay of 308 days in filing the appeal. Therefore, the respondent had filed a petition to condone the delay of 308 days in filing the appeal. The petition was dealt by the learned Principal District and Sessions Judge and the same was allowed and the delay was condoned. Being aggrieved by that order, the petitioner/accused has filed the present revision before this court.

4. The learned counsel appearing for the petitioner would submit that though the respondent/complainant has stated in his affidavit that due to his illness, he could not file the Appeal in time, whereas, the records show that the respondent/complainant did appear during the period before the learned Judicial Magistrate No.I, Udumalpet, in other cases on various dates mentioned in the documents. Therefore, the reason given by the respondent/complainant in his affidavit is not correct. Though the learned Principal District and Session Judge has found that the reason stated is false, however, considering his age of the respondent/complainant, in order to give sufficient opportunities to him, as he could not file the Appeal, the delay was condoned which warrants interference by this Court.

5. Heard both sides and perused all the materials available on record.

6. Though it is an admitted fact that the respondent/complainant had filed the private complaint under Section 200 Cr.P.C., against the revision petitioner herein for the offence under Section 138 of the Negotiable Instruments Act, before the learned Judicial Magistrate No.I, Udumalpet, Tiruppur District in C.C.No.148 of 2014 and since the learned Judicial Magistrate - I, acquitted the petitioner. The respondent/complainant wanted to file appeal against the said judgment of acquittal passed by the learned Judicial Magistrate. The respondent/complainant did not file the appeal in time and he filed a petition to condone the delay of 308 days in filing the appeal. Though the respondent/complainant has stated in his affidavit that the delay of 308 days had occurred due to his illness and hence he could not file the appeal in time. But, whereas, the Appellate Court finds that he had appeared before the learned Judicial Magistrate -I, in C.C.No.148 of 2014 on various dates. Though the reason stated in the affidavit is not correct, but, however, since the respondent/complainant has filed an appeal to challenge the judgment passed by the learned Judicial Magistrate, considering his age and in order to give sufficient opportunity to him, the Appellate Court condoned delay and allowed the petition, subject to the payment of costs of Rs.3,500/-. The power of Court to condone the delay is only discretionary and the discretion has to be exercised in judiciously and the Court has to see as to whether any arbitrariness is found while in exercising the discretionary jurisdiction. In this case, there was no arbitrariness in exercising the discretionary jurisdiction. However, the petitioner was also compensated on payment of costs of Rs.3,500/- and as stated by the Appellate Court, no prejudice would be caused to the respondent, if the delay was condoned and allowed the parties to participate in the appeal.

Therefore, under these circumstances, since the order of Court below does not warrant interference, there is no merit in the revision petition.

7. Accordingly, the Criminal Revision Case is dismissed. Consequently, connected CrI.M.P.No.16350 of 2018 is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

msm

To

1. The Principal District and Sessions Judge,
Tiruppur.
2. The Judicial Magistrate - I,
Udumalpet, Tiruppur District.
3. The Public Prosecutor,
High Court, Madras.

CrI.R.C.No.1405 of 2018

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