

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 01.02.2019

CORAM

**THE HON'BLE MR.JUSTICE P.VELMURUGAN****Cr1.R.C.[MD]No.123 of 2017**

WEB COPY

T.Periyasekar ... Petitioner/Petitioner/Complainant

Vs.

S.Shanmugavel ... Respondent/Respondent/Respondent

**PRAYER:** Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records pertaining to the order of dismissal in Cr.M.P.No.3257 of 2016 in C.C. unnumbered of 2016 on the file of the learned Judge, Fast Track Court (Magisterial Level) Thoothukudi dated 24.01.2017 and set aside the same.

For Petitioner : Mr.B.N.Raja Mohamed

For Respondent : Mr.A.Thiruvadikumar

**ORDER**

This Criminal Revision Case has been filed to call for the records pertaining to the order of dismissal in Cr.M.P.No.3257 of 2016 in C.C. unnumbered of 2016 on the file of the learned Judge, Fast Track Court (Magisterial Level) Thoothukudi dated 24.01.2017 and set aside the same.

2.Heard the learned Counsel appearing for the revision petitioner and the learned Counsel appearing for the respondent.

3.The case of the complainant is that the respondent using the personal acquaintances with the complainant has borrowed a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as hand loan for his urgent needs from the complainant on 20.06.2015 with a promise to repay the same within one month. Accordingly, the respondent issued a cheque for Rs.5,00,000/- drawn from City Union Bank, V.E. Road, Tuticorin bearing number 001078 dated 21.07.2015. But, when the petitioner deposited the above cheque before the Karur Vysya Bank Ltd., Tuticorin for realization on 22.07.2015, it got dishonoured for the reasons "Funds Insufficient", which was communicated to the petitioner vide memo dated 22.07.2015.

4. Thereafter, the petitioner issued a legal notice on 24.07.2015 to the respondent demanding repayment of the cheque amount within 15 days from the date of receipt of the legal notice. Despite receipt of the said legal notice, the respondent did not repay the said amount. Hence, the petitioner lodged a private



complaint u/s. 200 of Cr.P.C. r/w. Sections 138 and 142 of the Negotiable Instruments Act, 1881, against the respondent on 11.01.2016 with a delay of 114 days with an application to condone the delay in filing the private complaint.

5. The learned Judge, Fast Track Court (Magisterial Level), Thoothukudi, numbered the condone delay petition as Cr.M.P.No.3257 of 2016, but dismissed the same vide order dated 24.01.2017. Aggrieved over the said order, the petitioner has preferred this Criminal Revision case.

6. The learned counsel for the petitioner would submit that since he was suffering from Jaundice, he could not file the complaint on time and the very same reason submitted before the learned Judge, Fast Track Court (Magisterial Level), Thoothukudi. He further placed reliance upon the judgment reported in **2013(2) MWN (Cr.) (DCC)** in the case of **P.Raju vs.U.Rambabu** wherein this Court has taken a lenient view in condoning the delay.

7. Though the petitioner has raised some medical grounds in his petition to condone the delay of 114 days in filing a private complaint, the same has not been accepted by the learned Magistrate. Neither medical certificate attached with petition or produced any oral and documentary evidence to prove the inability to file complaint in time. Therefore, this Court finds that even though the petitioner has stated reasons for delay, the said reason of Jaundice is not accepted as stated by the learned Judge, Fast Track Court (Magisterial Level), Thoothukudi. However, in the interest of justice in order to give opportunity to the petitioner to establish his case on merits, this Court is inclined to set aside the order passed by the Magistrate. Had the revision case is allowed, order passed in petition to condone the delay is set aside and complaint is taken on file no prejudice would be caused to the respondent. However, the inconvenience caused to the respondent has to be compensated in terms of the costs. Therefore, the Criminal Revision Petition is Allowed, subject to the condition that the petitioner shall pay a sum of Rs.50,000/- (Rupees Fifty Thousand only) to the respondent within a period of 15 days from the date of receipt of a copy of this order. After paying cost and production of the receipt of the same, the learned Judge, Fast Track Court (Magisterial Level), Thoothukudi is directed to take complaint on file if it is otherwise in order and proceed further in accordance with law.

Sd/-

Assistant Registrar (CS-III)

/ True Copy /

Sub Assistant Registrar (CS- )



To

1) The Judge,  
Fast Track Court (Magisterial Level), Thoothukudi.

2) The Additional Public Prosecutor,  
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.A.THIRUVADI KUMAR, Advocate  
( SR-44321[F] dated 01/02/2019 )

+1 CC to M/s.B.N.RAJA MOHAMED, Advocate  
( SR-44223[F] dated 01/02/2019 )

Order made in  
**Cr1.R.C.[MD]No.123 of 2017**  
**01.02.2019.**

**sts**

ES/23.07.2019/3P/5C