



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14.08.2019

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.RC. (MD)No.158 of 2019

Mr.Chakravarthy B Ganesh : Petitioner/Appellant/3rd Party

Vs.

1.Director: Daniel & Samuel Logistics Pvt Ltd.,
Regd Office No.107/93D/23A,
Rajagopal Nagar,
2nd Street,
Millerpuram,
Tuticorin-628 008.

2.Mr.T.Selvakumar, S/o.Thangasamy Nadar,
Director: Daniel & Samuel Logistics Pvt Ltd.,
Regd Office No.107/93D/23A,
Rajagopal Nagar,
2nd Street,
Millerpuram,
Tuticorin-628 008.

3.Mr.Sweetlin, W/o.T.Selvakumar
Director: Daniel & Samuel Logistics Pvt Ltd.,
Regd Office No.107/93D/23A,
Rajagopal Nagar,
2nd Street,
Millerpuram,
Tuticorin-628 008.

: Respondents/Respondents/Accused

Prayer: Criminal Revision filed under Sections 397 and 401 of the Code of Criminal Procedure against the order of the Principal Sessions Judge, Tuticorin, dated 11.01.2019 in Cr.M.P.No.249 of 2018 in unregistered C.A.No.Nil of 2018 on the file of the Principal Sessions Judge, in C.C.No.204 of 2014, dated 22/05/2014 on the file of the Judicial Magistrate, Fast Track Court, Tuticorin.

For Revision Petitioner	: Mr.T.Seeni Seyed Amma for Mr.T.Lajapathi Roy
For Respondents	: Mr.A.Mohan (R2 & R3)
For R1	: No Appearance



O R D E R

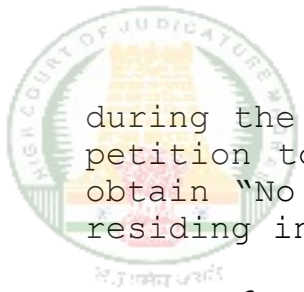
This Criminal Revision is directed against the order of the Principal Sessions Judge, Tuticoron, dated 11.01.2019 passed in Crl.M.P.No.249 of 2018 in unregistered C.A.No.Nil of 2018 in C.C.No.204 of 2014, dated 22.05.2014 on the file of the Judicial Magistrate, Fast Track Court, Tuticorin.

2.The father of the petitioner namely S.Balasubramaniam has initiated criminal proceedings under Section 138 of the Negotiable Instruments Act against the Company namely Daniel & Samuel Logistics Private Limited and others respondents herein as Directors of the Company for dishonour of three cheques for Rs.40,00,000/-, which have been issued for discharging the liability. The father of the petitioner was being a Mediator, while purchasing of Cargo Vessel namely "BMC Genesis" from M/s.Bharat Marines Company India Private Limited, agreed to pay 2% amount as commission in the total purchase consideration. The father of the petitioner initiated proceedings under Section 138 of the Negotiable Instruments Act for non-payment of the said amount. During the pendency of the said proceedings, on the file of the Judicial Magistrate, Fast Track Court, Thoothukudi, in C.C.No.204 of 2014, the father of the petitioner was died on 24.07.2016 due to illness. Thereafter, the petitioner filed Crl.MP No.4897 of 2016 seeking permission to pursue the case continuously on the capacity as a legal-heir of his deceased father S.Balasubramaniam.

3.The said petition was allowed on 20.02.2017 with a condition that the petitioner shall file "No Objection Certificate" obtaining from other legal heirs of the deceased within a period of 10 days along with an affidavit certificated by a Notary Public on or before 20.02.2017. As the petitioner has not complied with the conditional order, the learned Judicial Magistrate has dismissed the CC No.204 of 2014, by order, dated 21.02.2017. Aggrieved by the said order, the petitioner preferred appeal before the Principal Sessions Judge, Thoothukudi along with a petition filed under Section 196(2) of the Criminal Rules of Practice to condone the delay of 180 days in preferring appeal. After enquiry, the learned Judge dismissed the condone delay petition, by order, dated 11.02.2019 on the ground that the petitioner has not explained the delay with sufficient reasons and failed to produce material documents to establish the reasons for causing delay. Aggrieved by the said order, the petitioner is before this court.

4.Heard both sides and perused the materials available on record.

5.It is seen from the records that the father of the petitioner filed a complaint under Section 138 of the Negotiable Instruments Act in C.C.No.204 of 2014 before the Judicial Magistrate (Fast Track Court), Tuticorin and he passed away on 24.07.2016



during the pendency of the said proceedings. The petitioner filed a petition to implead himself as a legal-heir, however, he could not obtain "No Objection Certificate" from his siblings since they were residing in various parts of the country.

6.It is mainly contended by the learned counsel appearing for the petitioner that the delay in filing the condone delay petition is neither wilful nor wanton and the mother of the petitioner took treatment at Kerala and hence, he has to take care his mother and further, his brother and sisters have delayed to grant "No Objection Certificate" to pursue the case initiated by his father and prays for allowing the criminal petition, by setting aside the impugned order.

7.It is seen that it is averred in the affidavit filed by the petitioner that due to his business and for looking after his mother's medical condition, he could not meet his counsel. But the learned Principal Sessions Judge, Thoothukudi, without properly considering the reasons offered by the petitioner, has dismissed the petition filed for condonation of delay, which according to this court is not correct. Hence, the impugned order passed by the court below is liable to be set aside on payment of costs.

8.In the result, the Criminal Revision is **allowed**, by setting aside the impugned order, dated 11.01.2019 on condition that the petitioner shall pay a cost of Rs.2,000/- (Rupees Two thousand only) to the Legal Services Authority attached to this Bench, within a period of two weeks from the date of receipt of a copy of this order, failing which, the criminal revision shall stand dismissed automatically without reference to this court.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate,
Fast Track Court,
Tuticorin.
2. The Principal Sessions Judge,
Tuticorin.



3.The Secretary,
The Legal Services Authority,
Madruai Bench of Madras High Court,
Madurai.

Copy to: The Record Keeper,
Criminal Section,
Madruai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T. LAJAPATHI ROY, Advocate SR-82261.

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14.8.2019

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