



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2019

CORAM

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

Crl.R.C(MD)No.322 of 2019

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M/s.Chettinad Cement Co., Private Ltd.,
First Floor,
D-222, No.4th Cross,
Anna Nagar,
Tenur, Trichy-620 017.

Represented by Power Agent

Mr.Alen Issac Devadoss : Revision Petitioner/ Complainant
Vs.

M/s.Sri Lakshita Agencies,
represented by its Proprietor

Mr.Vadivel,
No.2/30, Ayyampalayam,
Palani Taluk,
Dindigul-624 621

: Respondent/Accused

Prayer: Criminal Revision has been filed under Sections 397 & 401 of Criminal Procedure Code, against the order, dated 06.03.2018 made in Cr.M.P.No.9256 of 2017 on the file of the Judicial Magistrate No.IV, Tiruchirappalli.

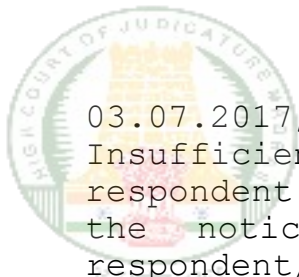
For Revision Petitioner : Mr.C.Muthu Saravanan

For Respondent : Mr.K.Arunraj

O R D E R

This Criminal Revision is directed against the order, dated 06.03.2018 made in Cr.M.P.No.9256 of 2017 on the file of the Judicial Magistrate No.IV, Tiruchirappalli.

2.The respondent/accused is the Proprietor of M/s.Sri Lakshita Agencies and they purchased cements from the petitioner in the year 2016 to the tune of Rs.5,59,939/- and subsequently, the respondent/accused failed to make payment within a stipulated time and therefore, the petitioner approached the respondent and demanded for payment of outstanding amount. To discharge their liability, the respondent issued a cheque, dated 05.06.2017 bearing No.543997 drawn on SBI, Pappampatti Branch, Palani Taluk, Dindigul, for a sum of Rs.3,28,639/- as part payment. When the said cheque was presented for encashment at HDFC Bank, Thillai Nagar Branch, Trichy, on



03.07.2017, it was returned with the endorsement of Funds Insufficient. Thereafter, the petitioner issued a notice to the respondent calling upon to repay the cheque amount. After receipt of the notice on 15.07.2017, there was no response from the respondent/accused.

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3.It is stated by the petitioner that being the Limited Company, after getting necessary approval, they prepared to initiate proceedings under Section 138 of the Negotiable Instruments Act and the limitation for filing the case is on or before 10.09.2017. But unfortunately, they have misplaced the original cheque and thereafter found the same on 26.09.2017 and subsequently, they filed the complaint on 05.10.2017 before the Judicial Magistrate No.IV, Trichy along with the petition to condone the delay of 29 days and the same was taken on file in Cr.M.P.No.9656 of 2017. After hearing both sides, the learned Judicial Magistrate No.IV, Trichy has dismissed the condone delay petition, by order, dated 06.03.2018. 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 petitioner being the Limited Company, after getting necessary approval prepared to initiate proceedings under Section 138 of the Negotiable Instruments Act and the limitation for filing the case is on or before 10.09.2017.

6.It is averred by the petitioner that they have misplaced the original cheque and thereafter, found the same on 26.09.2017 and subsequently, they filed the complaint on 05.10.2017 before the Judicial Magistrate No.IV, Trichy along with the petition to condone the delay of 29 days and the same was taken on file in Cr.M.P.No.9656 of 2017. After hearing both sides, the learned Judicial Magistrate No.IV, Trichy has dismissed the condone delay petition, by order, dated 06.03.2018.

7.It is the contention of the petitioner that the delay in filing the condone delay petition is neither wilful nor wanton and the petitioner misplaced the original cheque, return memo and ledger, which were traced out by the petitioner on 26.09.2017. Hence, there was a delay. But the learned Judicial Magistrate No.IV, Trichy, 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 06.03.2018 on condition that the petitioner shall pay a cost of Rs.2,000/- (Rupees Two thousand only)



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 (CS III)

// True Copy //

Sub Assistant Registrar(CS)

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To

The Judicial Magistrate No.IV,
Tiruchirappalli.

Copy to:
The Officer Incharge,
Legal Service Authority,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.C.MUTHU SARAIVANAN, Advocate (SR-80524[F] dated
08/08/2019)

+1 CC to M/s.K.ARUNRAJ, Advocate (SR-81069[F] dated 09/08/2019)

Judgment made in
Crl.R.C (MD) No.322 of 2019
07.08.2019

KK/SAR/12.11.2019/3P-5C/