



BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT
DATE : 20.09.2019

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

CRL.R.C(MD) NOS. 463 & 464 OF 2019

AND

CRL.M.P. (MD) NO. 6377 OF 2019

K.Kalaiselvan

... Petitioner in both revisions

- Vs -

Karunakaran

... Respondent in Crl. R.C. 463/2019

B.Loganathan

... Respondent in Crl. R.C. 464/2019

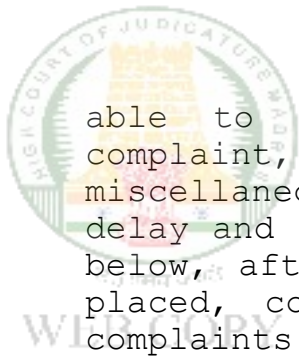
Criminal Revision Cases filed u/s 397 r/w 401 of the Code of Criminal Procedure, against the order dated 07.06.2019, passed by the learned Judicial Magistrate, Fast Track Court, Karur, in Cr. M.P. Nos.2107 & 2108 of 2019.

For Petitioner : Mr. V.Rajiv Rufus
For Respondents : Mr. V.Sukumar

COMMON ORDER

The present revision petitions have been filed against the orders dated 07.06.2019, passed by the learned Judicial Magistrate, Fast Tack Court, Karur, in Cr. M.P. Nos.2107 & 2108/2019 in and by which the learned Magistrate, condoned the delay in filing the complaint on certain terms.

2. The case of the respondents herein/complainant before the court below is that the petitioner herein had borrowed certain sums of money and in lieu of repayment, had issued cheques to be presented on a particular date. However, on presentation of the cheque, the same got dishonoured prompting the respondent herein/complainant to issue a lawyer's notice for which a reply was sent by the petitioner herein disputing the same. However, after receipt of the reply, the complaint was not filed within time, but with a delay, stating that since the respondents herein was suffering certain ailments, which prevented them from filing the complaint on time. It is the further averred by the respondents herein that since their presence during filing of the complaint was necessary and since they were suffering certain ailments and not



able to present themselves before the court for filing the complaint, the delay had occasioned and, therefore, filed the miscellaneous petitions, praying the court below to condone the delay and for a direction to take the complaint on file. The court below, after hearing the parties and advertent to the submissions placed, condoned the delay of 13 days in filing the respective complaints on condition that the respondents herein pay a cost of Rs.500/- in each of the petition. Aggrieved by the said order of the court below in condoning the delay, the present revision petitions have been filed by the petitioner.

3. Learned counsel appearing for the petitioner contended that the delay in filing the complaint is fatal on the ground that though the respondents herein/complainant claims that they were suffering certain ailments and were taking treatment, however, they have not filed any proof to substantiate the ailment and in the absence of any documentary evidence to substantiate their ailment, the court below ought not have condoned the delay. It is the further submission of the learned counsel for the petitioners that Sections 142 (b) of the Negotiable Instruments Act speaks about 'sufficient cause' and not just a reason and, therefore, in the absence of sufficient cause shown by the respondent herein, the condonation of delay is *per se* impermissible.

4. Learned counsel for the petitioner, in support of his contentions, relied on the following decisions to drive home the point that condonation of delay is not a matter of routine and that sufficient and justifiable cause should be shown to condone the delay :-

- i) Esha Bhattacharjee - Vs - Managing Committee of Raghunathpur Nafar Academy & Ors. (CDJ 2013 SC 807);*
and
- ii) Jaya Ravhava Colour - Vs - Euro Impex (CDJ 2015 MHC 5706)*

5. This Court heard the learned counsel appearing for the respondents/complainants on the above contentions. This Court also gave its careful consideration to the submissions advanced by the learned counsel for the parties and also perused the materials available on record as also the decisions to which attention was drawn.

6. This Court, on even day, had passed an order condoning the delay in the case of *Gnanavadivelan & Anr. - Vs - R.Dhanapalan (Crl. R.C. (MD) Nos.416 & 417 of 2019)* wherein, this Court, taking into consideration the law laid down by the Hon'ble Supreme Court relating to condonation of delay, has held as under :-

"11. From a conspectus reading of the decisions quoted above, it is clear that it is the attitude of the party that matters and not the number of days



delay. It has been cautioned that where the Court finds that the party, who failed to approach the Court within the stipulated time, comes forward with proper and sufficient explanation for condoning the delay, on the court being satisfied that the delay caused is not part of any deliberate conduct of the party or any dilatory tactics to prolong the litigation, the court can condone the delay. As has been held by the Supreme Court in **Ram Nath Sao @ Ram Sahu & Ors. - Vs - Gobardhan Sap & Ors. (2002 (3) SCC 195)**, "acceptance of explanation furnished should be the rule and refusal an exception". So long as the party comes before the court with clean hands, the scales should naturally tilt in favour of the party.

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15. As held by the Hon'ble Supreme Court in Basawaraj's case (supra), the meaning of the word "sufficient" is "adequate" or "enough". Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances of the existing case duly examined from the view point of a reasonable standard of a cautious man. Further, the Supreme Court has held that "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned, and that whether or not sufficient cause has been furnished, can be decided on the facts of a particular case and no straitjacket formula is possible.

16. Therefore, it is crystal clear from the above decision of the Hon'ble Supreme Court that the cause espoused before the court should be sufficient enough for the court to believe the person for granting the relief. However, the point raised by the petitioners herein is not that sufficient cause has not been shown, rather, the issue raised before this Court is that no proof to establish the sufficient cause has been placed before the Court.

17. Placing of proof to establish sufficient cause and pleading sufficient cause are totally different. In certain cases, there may be sufficient cause, which could be visualised, but no proof thereof to establish the same could be placed. In such cases, it cannot be held that there being absence of any proof to establish sufficient cause, as pleaded, the relief could not be granted. The Court is duty bound



to look at the scenario in a larger perspective in order to ensure justice to both parties and not confine itself within a narrow campus. Separation of grain from the chaff is the bounden duty of the court in dispensation of substantial justice."

(Emphasis Supplied)

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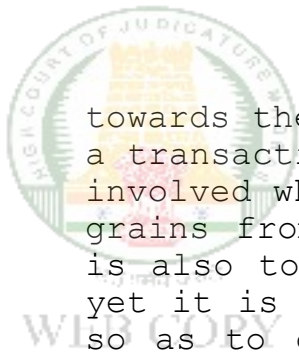
7. The trial court, on a perusal of the counter statement of the accused/petitioner herein, wherein the accused has claimed that no amount has been borrowed from the complainants, but collusion between the complainants and one other person has been imputed by the petitioner, taking into consideration the amounts involved, being huge and the delay not being very high and the reasons attributed by the complainants cannot be brushed aside as such, has allowed the petitions by condoning the delay.

8. This Court, in *Gnanavadivelan's case (supra)* has further held as under :-

"21. Condonation of delay is akin to a contempt petition, but with a string attached to it, where discretion is vested in the court to condone the delay. The discretion is totally vested in the court to render substantial justice and is not at the behest of one party or the other.

22. The delay occasioned over and above the period of limitation leaves the Damocles Sword hanging over the head of both the parties to the lis, particularly if the parties are at loggerheads, with the thin strand of thread, being the arbiter to the issue, holding the sword. It is the duty of the arbiter, herein the Court, to see that the breaking of the thread does not cause serious injury to either of the party, but at the same time, protecting the rights of the party, who has overshot the limitation, provided the delay occasioned is neither wilful nor wanton and that the said party exhibits genuineness."

9. In the case on hand, though the complainants have cited reason for the delay, yet the only ground of attack is that no documentary evidence has been placed before the court to substantiate the reason cited for the delay. It is seen from the records as also the averments, the complainants have complained of ailments and were taking certain treatments for which there is no necessity of any medical records, but mere prescriptions. Further, one of the complainant has even stated that he has taken herbal treatment. That being the case, insistence of documentary proof for condoning the delay would be nothing but an attempt to protract the proceedings/stall the movement of the case. Though prescriptions, if submitted, would have been an additional armour in the armoury of the complainants, however, mere non-production of documentary proof



towards the reason claimed cannot be put against the complainants in a transaction of this nature, more especially, when huge amounts are involved where this Court is entrusted with the duty to weed out the grains from the chaff and render substantial justice. Further, it is also to be borne in mind that though there is delay of 13 days, yet it is to be pointed out that the delay is not so very enormous so as to cause detriment to the petitioner. The veracity of the cheque is not disputed by the petitioner, though its issuance to the concerned complainants is disputed, which is an issue that has to be gone into at the time of trial and it cannot be predetermined at the preliminary stage. The averments in the complaint coupled with the certain averments in the counter of the petitioner herein relating to issuance of cheque, which is not in dispute, really tilt the balance of scales in favour of the complainants for condoning the delay.

10. Therefore, for the reasons aforesaid, this Court finds that "sufficient cause" as mandated by the Supreme Court in a catena of decisions has been pleaded by the complainant, which has been accepted by the court below, and, therefore, the same cannot be said to be perverse or illegal. This Court is of the considered view that the cause shown is sufficient enough for the court below to condone the delay, which the court below has rightly accepted.

11. In such view of the matter, for the reasons aforesaid, this Court is in agreement with the view taken by the court below and, therefore, is of the considered opinion that no interference is called for with the order passed by the court below. Accordingly, the criminal revisions fail and the same are dismissed. Consequently, connected miscellaneous petition is also dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To
The Judicial Magistrate
Fast Track Court, Karur.

+1 CC to Mr.V.RAJIV RUFUS, Advocate (SR-88059[F] dated 20/09/2019)
+1 CC to Mr.V.SUKUMAR, Advocate (SR-88976[F] dated 24/09/2019)

CRL. R.C. (MD) NOS.463 & 464 OF 2019
20.09.2019

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