

HONOURABLE JUSTICE G. SRI DEVI

CRIMINAL REVISION CASE No.1049 of 2019

ORDER:

The present Criminal Revision Case is filed under Sections 397 read with 401 Cr.P.C. aggrieved by the order, dated 15.04.2019 passed in Crl.M.P.No.1572 of 2018 in SR No.2468 of 2018 on the file of the I Additional Chief Metropolitan Magistrate, Hyderabad, wherein and whereunder an application filed under Section 142 (b) of the Negotiable Instruments Act, 1881, to condone the delay of (431) days in filing the complaint, was allowed.

The facts in issue are that the 2nd respondent-complainant filed a complaint against the revision petitioner/accused for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881, in respect of the dishonoured cheques bearing No.62975 dated 09.03.2017 for Rs.2,00,000/- and cheque No.62976, dated 24.03.2017 for Rs.3,39,000/-, issued by the revision petitioner/accused in his favour towards part and partial payment of hand loan of Rs.7,39,000/- along with interest at 24% per annum. As there was a delay in filing the complaint, the 2nd respondent-complainant filed Crl.M.P.No.1572 of 2018, seeking condonation of delay of 431 days in filing the complaint. It is stated in the petition that the 2nd respondent-complainant informed to the revision petitioner/accused with regard to the dishonour of cheques on telephone and also issued a legal notice through his Counsel on 10.04.2017. After receiving the said notice, the

revision petitioner/accused got issued reply on 19.04.2017. It is also stated that in the month of May, 2017, the revision petitioner/accused requested time for repayment of the said amount along with interest and a panchayat was held at Village Grampanchayat Office. In the said panchayat, in the presence of Krishna Reddy, Sarpanch, Hydershakote, the revision petitioner/accused has agreed to pay the said loan amount of Rs.7,39,000/- on or before 30.12.2017. When the 2nd respondent-complainant demanded for the said amount, during the month of December, 2018, the revision petitioner/accused refused to pay and also threatened him. Hence, the delay of 431 days was occurred.

Notice sent to the revision petitioner/accused was returned unclaimed. After hearing the Counsel for the 2nd respondent-complainant, the trial Court condoned the delay of 431 days in filing the complaint on payment of costs of Rs.10,000/- to Legal Services Authority. Challenging the same, the revision petitioner/accused filed the present Criminal Revision Case.

Heard learned Counsel for the revision petitioner/accused, Additional Public Prosecutor appearing for the 1st respondent-State and learned Counsel appearing for the 2nd respondent-complainant.

Learned Counsel for the revision petitioner/accused would submit that the Court below ought not to have appreciated the insufficient cause shown by the 2nd respondent-complainant, which is far away from truth. The averments placed and documents submitted

are contradicting with each other. The Court below erred in condoning the abnormal delay of 431 days as the 2nd respondent-complainant has not made any sufficient cause for condoning the said delay and the Court below ought to have given an opportunity to the revision petitioner/accused before condoning the abnormal delay of 431 days.

Learned Counsel appearing for the 2nd respondent-complainant would submit that as per the proviso to Section 142 (b) of the Negotiable Instruments Act, 1881, the Magistrate is empowered to condone the delay in filing the complaint, if sufficient cause is shown. The Court below after satisfying the reasons mentioned by the 2nd respondent-complainant has rightly condoned the delay. There is no illegality or irregularity in the order passed by the Court below.

The main contention of the revision petitioner/accused is that without affording an opportunity to him, the Court below condoned the abnormal delay. Though the impugned order itself discloses that notice sent to the revision petitioner/accused was returned unclaimed, but the same does not disclose that the revision petitioner/accused refused to accept the notice, as such the contention of the revision petitioner/accused that no opportunity was given to him to contest the same is tenable and no opportunity whatsoever was given to the revision petitioner/accused to contest the application for condoning the delay.

Admittedly, the impugned order is an ex parte order, wherein the abnormal delay of 431 days in filing the complaint was condoned. In order to give an opportunity to the petitioner/accused to contest the said petition, the impugned order is liable to be set aside.

Accordingly, the Criminal Revision Case is allowed by setting aside the order dated 15.04.2019 passed in CrI.M.P.No.1572 of 2018 in SR No.2468 of 2018. The learned I Additional Chief Metropolitan Magistrate, Hyderabad, is directed to dispose of the matter afresh after affording an opportunity of hearing to the revision petitioner/accused.

Miscellaneous petitions, if any, pending shall stand closed.

09.12.2019
Gsn

JUSTICE G. SRI DEVI

