

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1048 of 2020

K.Gobu

...Petitioner

Vs.

S.Arun

...Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records and set aside the order dated 29.09.2020 made in C.M.P.No.8628 of 2018 on the file of the Judicial Magistrate No.I, Gobichettipalayam by allowing this criminal revision petition.

For Petitioner : Mr.J.Ranjith Kumar

For Respondent : Mr.R.Maruthachalamurthy

ORDER

The petitioner has filed a petition under Section 142(b) of the Negotiable Instruments Act, 1881, in C.M.P.No.8628 of 2018 for condonation of 115 days of delay in filing a private complaint against the respondent/accused under Section 138 of the Negotiable Instruments Act, 1881. The learned Judicial Magistrate No.I, Gobichettipalayam, by order, dated 29.09.2020, dismissed the petition, against which the present revision.

2.The respondent/accused was served with notice and Mr.R.Marudhachalamurthy and Mr.A.Yogaraj had entered appearance on behalf of the respondent.

3.The gist of the case is that the petitioner as complainant filed a private complaint against the respondent/accused for offence under Section 138 of the Negotiable Instruments Act, 1881. The respondent borrowed a sum of Rs.1,50,000/- on 12.01.2018 from the petitioner. In discharge of the said liability, the respondent issued two cheques of Tamil Nadu Mercantile Bank, Bhavani branch bearing numbers 066758 and 066759, dated 12.04.2018 for Rs.1,50,000/-. When the cheques were presented for encashment with the petitioner's bank viz., Andhra Bank, Gobichettipalayam Branch on 12.04.2018, the same were returned with an endorsement "Funds

Insufficient" and the same was intimated to the petitioner on 18.04.2018. Thereafter, the petitioner issued a statutory notice to the respondent on 04.05.2018 and the same was received by the respondent on 05.05.2018. Hence, the complaint ought to have been filed by the petitioner on or before 18.06.2018. In the meanwhile, the respondent approached the petitioner and represented that on or before 02.08.2018, he would make the payment and settle the cheque amount. On believing the representation, the petitioner did not file any complaint till 02.08.2018. When the petitioner approached the respondent for settlement of the cheque amount, the respondent refused to do so. Hence, the petitioner had to file the complaint under Section 138 of the Negotiable Instruments Act. In the meantime, a delay of 115 days occurred and the petitioner filed the private complaint along with delay condone petition under Section 142(b) of the Negotiable Instruments Act. The learned Judicial Magistrate No.I, Gobichettipalayam, by order, dated 29.09.2020 in C.M.P.No.8628 of 2018, dismissed the petition, against which the present revision.

4.The learned counsel for the petitioner submitted that the petitioner gave a sum of Rs.1,50,000/- to the respondent on 12.01.2018. The respondent, in discharge of the liability, issued two cheques dated 12.04.2018. When the cheques were presented for collection, the same were returned for the reason "Funds Insufficient". The petitioner issued statutory notice on 04.05.2018 and the petitioner ought to have file a complaint on or before 18.06.2018. Since the respondent approached the petitioner and sought time till 02.08.2018 to repay the cheque amount, the petitioner has not initiated any action. Thereafter, the respondent failed to return the cheque amount, due to which, the delay has been occurred. As per Section 142 (b) of the Negotiable Instruments Act, the proviso has been projected that if sufficient cause is available for not making a complaint within a statutory period, the cognizance of the complaint can be taken. The contention of the petitioner is that the petitioner had given sufficient cause for the delay in lodging the complaint. Further, the respondent has not denied the issuance of the two cheques and his signature. In view of the same, the lower Court ought not to have dismissed the condone delay petition and ought not to have denied the substantial justice to the petitioner without any valid reason.

5.The learned counsel for the respondent submitted that it is admitted by the petitioner that the respondent has sent a reply notice, denying the averments made in the complaint. In view of the same, the petitioner's contention that the respondent for repayment of the cheque amount had sought time is false and far-fetched. The denial of liability with the petitioner has been clearly stated in the reply notice. The

petitioner for obvious reasons, has failed to file a complaint within the statutory limit and by giving false reasons, has filed the condone delay petition. The trial Court finding that the reason given by the petitioner are not believable and acceptable, had dismissed the condone delay petition. Hence, he prayed for dismissal of the revision.

6.This Court considered the rival submissions and perused the materials available on record.

7.It is not in dispute that the respondent issued the two cheques to the petitioner and further, the respondent has not denied the issuance of the cheques or the signature found in the cheques. There is a statutory presumption against the respondent under Section 118 and 139 of the Negotiable Instruments Act. By sending a reply notice with denial of liability would not amount in dislodging the statutory presumption. The statutory presumption has to be dislodged by way of evidence and materials brought on record. In this case, admittedly, no evidence has been recorded. The proviso to Section 142 of the Negotiable Instruments Act, has been brought in for the purpose of rendering substantial justice. The lower Court has not given any valid reason in the impugned order.

8.In view of the above, the order dated 09.09.2020, made in C.M.P.No.8628 of 2018, passed by the learned Judicial Magistrate No.I, Gobichettipalayam, is set aside and the delay of 115 days in lodging the complaint is condoned. The learned Judicial Magistrate No.I, Gobichettipalayam is directed to take the complaint of the petitioner on file and dispose of the case within a period of six months from the date of taking the complaint on file. In the result, this Criminal Revision Petition is allowed.

Sd/-

Assistant Registrar(INSP CELL)

// True Copy//

Sub Assistant Registrar

Vv2

To

The Judicial Magistrate No.I,
Gobichettipalayam.

+1cc to M/s.R.Marudhachalamurthy, Advocate, SR.No.42539

CrI.R.C.No.1048 of 2020

GP(CO)
KKV/05/02/2021