

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1047 of 2020

K.Gobu,
S/o.Kittusamy

...Petitioner

Vs.

G.M.Sivakumar,
S/o.Muthusamy

...Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of the Code of Criminal Procedure, to call for the records and set aside the order dated 24.08.2020 made in C.M.P.No.8627 of 2018 on the file of the Judicial Magistrate No.I, Gobichettipalayam by allowing the Criminal Revision Petition.

For Petitioner : Mr.J.Ranjithkumar
For Respondents : Mr.C.Raghavan,
Government Advocate [Crl. Side]

ORDER

The petition has been filed against the dismissal order dated 24.08.2020 made in C.M.P.No.8627 of 2018 on the file of the Judicial Magistrate No.I, Gobichettipalayam, to condone the delay of 115 days in preferring a complaint under Section 138 of Negotiable Instruments Act.

2. The Trial Court had taken up a complaint and the condone delay petition in C.M.P.No.8647 of 2018. Notice was ordered to the respondent. The respondent/proposed accused had not claimed the notice sent by the Trial Court and failed to appear before the Trial Court to make his objection. Recording the same the Trial Court proceeded to dispose of the condone delay petition on merits.

3. The contention of the learned counsel for the petitioner is that the complaint ought to have filed on or before 18.06.2018 and the petitioner could not do so for the reason that the cheque involved in this case was mis-placed in his

house and he was unable to retrieve the same. Only on 08.10.2018 he was able to find the lost cheque and hence the petitioner filed a complaint with the delay of 115 days on 10.10.2018. The Trial Court dismissed the C.M.P.No.8647 of 2018, stating that the reason given by the petitioner for condonation of delay is unacceptable.

4. Considering the submission and on perusal of the materials, it is seen that the respondent being aware of the notice sent by the Trial Court had avoided to receive the same and the notice has been returned as not claimed. Hence, the notice sent to the respondent is considered as served.

5. This Court finds that the reason given by the petitioner is reasonable and substantial justice could not be denied to the petitioner on technical ground. Further Section 142(b) of the Negotiable Instruments Act, enable the petitioner/litigant to give a possible explanation for the delay and proceed against the proposed accused. Since the respondent/proposed accused failed to appear before the Trial Court, this Court feels the issuance of notice to the respondent in the present Criminal Revision case is not necessary. In view of the same, the delay is condoned. The order dated 24.08.2020, made in C.M.P.No.8627 of 2018 on the file of the Judicial Magistrate No.I, Gobichettipalayam is set aside. The Lower Court to take the complaint of the petitioner on file if it is otherwise in order.

6. With the above observations, this Criminal Revision Petition is allowed.

s/d-
Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Judicial Magistrate No.I,
Gobichettipalayam.

2. The Public Prosecutor,
High Court, Madras.

CrI.R.C.No.1047 of 2020

AD (CO)
KKV/03/12/2020