

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.02.2020

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN

Crl.R.C.No.1600 of 2017

R.Jayaprakash ... Petitioner

Vs.

D.Boopathy ... Respondent

Criminal Revision filed under Section 397 read with Section 401 Cr.P.C. seeking to set aside the order dated 10.11.2017 passed by the learned Judicial Magistrate, Fast Track Court No.1, Erode, in CMP No.2881 of 2017.

For Petitioner : Mr. S.Veeraraghavan

For Respondent : Mr. C.E.Pratap.

O R D E R

As against the order passed by the learned Judicial Magistrate, Fast Track Court No.1, (Magisterial Level), Erode, dismissing the petition seeking condonation of delay of 574 days in representing the complaint, this Criminal Revision Case has been instituted by the petitioner/ complainant.

2. The petitioner/complainant has filed a complaint under Section 138 of the Negotiable Instruments Act (hereinafter shortly referred to as 'the Act') against the respondent, which was returned for compliance. Citing his illness, the petitioner represented the said complaint with a petition to condone the delay of 574 days. The said petition was resisted by the respondent stating that the petitioner has not filed any document to support his ailment and the delay has not been properly explained and hence, prayed for dismissal of the said petition. By the order impugned herein, the trial Court has dismissed the petition on the ground that the delay was huge and inordinate and the petitioner has not explained the same with sufficient cause. Hence, this Criminal Revision.

3. The learned counsel for the petitioner submitted that the Court below ought to have shown liberal approach in condoning the delay of 574 days in representing the complaint, as the petitioner was suffering from SLE with Membranous Nephropathy; and Hemodialysis was done to him and hence, the delay occurred is neither wilful nor wanton; and hence the petition has to be allowed.

4. Per contra, the learned counsel for the respondent submitted that the Court below has rightly taken note of all the aspects and has rightly dismissed the petition and hence, the same does not require any interference in the hands of this Court.

5. Heard both sides and perused the records.

6. Here is a case, where illness has been shown as the cause, of course, not supported by any document. But, a perusal of the records would disclose that originally, the petitioner had filed the complaint on 25.03.2015 and the same was returned citing jurisdictional point. Again, the complaint was filed on 24.07.2015, which was returned on 20.10.2015 due to non-appearance of the petitioner and subsequently it was re-presented on 15.05.2017 citing jaundice as the reason for the delay in re-presenting the petition.

7. On a conspectus of the facts obtaining in this case, this Court is of the view that it is the sufficiency of cause that counts, irrespective of length of delay. However, the sufficient cause should be considered with pragmatism and justice-oriented approach rather than technical detection of sufficient cause for explaining everyday's delay.

8. If the petition before the Court below is considered based on justice-oriented approach, it can safely be held that the delay is not on account of any wilful dilatory tactics, want of bona fides, deliberate inaction or negligence on the part of the petitioner, but only thanks to the reason cited by him. If the delay is condoned, at the most, the case would be decided, that too, only after hearing the parties involved. But, on refusing condonation, it is all more probable that the matter would be thrown out on the basis of technicalities, in which event, the petitioner may be prejudiced. Hence, this Court is of the view that the petition for condonation of delay in representing the complaint ought to have been allowed, however, subject to payment of costs.

9. Accordingly, this Criminal Revision stands allowed by setting aside the impugned order, dated 10.11.2017, passed by the learned Judicial Magistrate, Fast Track Court No.1, Erode in CMP.No.2881 of 2017. Consequently, the delay in representing the complaint is condoned, subject to the condition that the petitioner pays a sum of Rs.2,000/- (Rupees Two Thousand only) to the District Legal Services Authority, Erode District, within a period of two weeks from the date of receipt of a copy of this order. Upon such payment and proof filed, the trial Court shall take up the complaint on file and proceed further in accordance with law. If the petitioner has not paid the said amount within the time stipulated, this Criminal Revision Case shall stand automatically dismissed without further reference to this Court.

Sd/-
Assistant Registrar

// True Copy//

Sub Assistant Registrar

To

- 1.Judicial Magistrate, Fast Track Court No.1, Erode.
- 2.The District Legal Services Authority,
Erode District.

Copy to: The Section Officer, Crl.Section,
High Court, Madras.

- +1cc to Mr.S.Veeraraghavan, Advocate, SR.No.10871.
+1cc to Mr.C.E.Pratap, Advocate, SR.No.11041.

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BP (CO)
CSR: 16.03.2020

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