

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.02.2020

CORAM

THE HON'BLE Mr. JUSTICE R. MAHADEVAN

Crl.R.C.Nos.390 & 391 of 2017

R.Srividhya

...Petitioner/Petitioner
in both Crl.RC

Vs.

R.Manimaran

...Respondent/ Respondent
in both Crl.RC

COMMON PRAYER:- Criminal Revisions are filed under Section 397 read with Section 401 Cr.P.C. to call for the impugned orders dated 12.12.2016 passed by the learned Judicial Magistrate, Thirukoilur, Villupuram District in CMP.Nos.6857 of 2015 & 6856 of 2015 and set aside the same.

For Petitioner : M/s.K.Raja
in both Crl.RC

For Respondent : No appearance
in both Crl.RC

COMMON ORDER

The petitioner has come with these Criminal Revision Cases as against the orders dated 12.12.2016 passed by the learned Judicial Magistrate, Thirukoilur, Villupuram District, in Crl.MP.Nos.6856 and 6857 of 2015, whereby, the petitions filed by the petitioner seeking condonation of delay of 200 days in filing the complaints, were dismissed.

2. The petitioner/complainant has filed two complaints under Section 138 of the Negotiable Instruments Act (hereinafter shortly referred to as 'the Act') against the respondent along with petitions to condone the delay of 200 days in filing the same. Denying the allegations raised in the same, the respondent filed counter affidavits. By the orders impugned herein, the trial Court has dismissed the said condone delay petitions stating that the petitioner has not explained the delay with

sufficient cause. Hence, these Criminal Revision Cases by the petitioner / complainant.

3. The learned counsel for the petitioner submitted that the petitioner was unable to file the complaints within the limitation period, as she was bedridden due to post maternity care and she has undergone family planning operation as well and hence, the delay in filing the complaints is neither wilful nor wanton. Considering the same, the Court below ought to have shown liberal approach and condoned the delay in filing the complaints.

4. Despite the service of notice, there is no representation for the respondent. Heard the learned counsel for the petitioner and perused the materials placed before this Court.

5. Admittedly, the petitioner preferred two complaints against the respondent for the offence under Section 138 of the Negotiable Instruments Act, with a delay of 200 days in filing the same. It is averred in the condone delay petitions that the petitioner was under post maternity care and she has undergone family planning operation as well and hence, she could not present the complaint in time. It is also stated therein that as per the decision of the Supreme Court in *Dashrath Rupsingh Rathod v. State of Maharashtra* [2014 (9) SCC 129], the petitioner must file a case only where the accused bank is located, however, she was unable to file the complaint in Bangalore, State of Karnataka, since the petitioner was totally bedridden and she could not carry a newly born baby to such a far off place. Being not satisfied with the reasons so stated by the petitioner, the Court below has dismissed the condone delay petitions and thereby rejected the two complaints preferred by the petitioner.

6. 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.

7. If the petitions before the Court below are 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 her. 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 petitions for condonation of delay in filing the complaints, ought to have been allowed, however, subject to payment of costs.

8. Accordingly, these Criminal Revision Cases stand allowed by setting aside the impugned orders, dated 12.12.2016, passed by the learned Judicial Magistrate, Thirukoilur, Villupuram District in CMP.Nos.6856 and 6857 of 2015. Consequently, the delay in filing the complaints is condoned, subject to the condition that the petitioner pays a sum of Rs.2,000/- each to the District Legal Services Authority, Villupuram 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 complaints on file and proceed further in accordance with law. If the petitioner has not paid the said amount within the time stipulated, these Criminal Revision Cases shall stand automatically dismissed without further reference to this Court.

Sd/-

Assistant Registrar(CO-MDU)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Thirukoilur, Villupuram District.
2. Do-Thro The Chief Judicial Magistrate,
Villupuram.
- 3.The District Legal Services Authority
Villupuram District.

+2cc to Mr.K.Raja, Advocate, Sr.no.15738 & 15737

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KK(CO)
RMP(16/07/2020)