



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2020

CORAM

THE HONOURABLE MR. JUSTICE R. MAHADEVAN

Cr1.R.C.No.1463 of 2019

P.Krishna Raj
Rep.by his Power agent,
S.Vijay Kumar

... Petitioner

Vs.

Prem Kumar,
Proprietor of M/S Aqua Knits,
No.50 and 51,
Karattankadu, 1st street,
KNP Colony Post, Tiruppur.

... Respondent

Prayer : Criminal Revision filed under Section 397 read with Section 401 Cr.P.C. seeking to set aside the order passed in Cr1.M.P.No.3461 of 2019 dated 03.10.2019 on the file of the Judicial Magistrate No.I, Tiruppur.

For Petitioner : Mr.Deepan Uday

For Respondent : No appearance

O R D E R

This Criminal Revision Case has been instituted by the petitioner/ complainant against the order dated 03.10.2019 passed by the learned Judicial Magistrate No.I, Tiruppur, in Cr1.MP.No.3461 of 2019, whereby, the petition seeking condonation of delay of 199 days in preferring the private complaint by the petitioner / complainant was dismissed.

2. According to the petitioner/complainant, he has filed a private complaint under Section 138 of the Negotiable Instruments Act (hereinafter shortly referred to as 'the Act') against the respondent / accused, along with the petition to condone the delay of 199 days in preferring the same. The reasons stated for the delay are that the proprietor was out of station; and the respondent gave a promise to repay the amount shortly and believing his words, the petitioner did not file the complaint within the statutory period. Being dissatisfied with the reasons so adduced, the Court below has dismissed the said condone delay petition, by the order



3. The learned counsel for the petitioner submitted that the delay in preferring the private complaint by the petitioner is neither wilful nor wanton, but only due to the reason that the respondent requested the petitioner not to file any complaint and he would repay the cheque amount in due course. Without considering the same in a proper perspective, the Court below has dismissed the condone delay petition. Placing reliance on the following decisions, wherein, this Court, in similar circumstances, has allowed the petitions by setting aside the orders impugned therein, the learned counsel submitted that if the delay in preferring the complaint is not condoned, the petitioner would be put to irreparable loss and injury: (i) In the order dated 10.06.2010 made in Crl.RC(MD) Nos.294 to 298 of 2008 [S.K.A.P.Balakrishnan v. Jimmy], at paragraph 18, it was observed as follows:

"18. Insofar as the petition in Crl.M.P.Nos.5613, 5616, 5617, 5612 and 5614 of 2006, on the file of the learned Judicial Magistrate, Theni, the complainant has not stated the exact delay but in the grounds of revision petition alone he has stated that there was 86 days of delay in filing the complaint under Section 138 of the Negotiable Instruments Act. Further, the complainant has stated in his affidavit filed in support of the petition that in Crl.M.P.Nos.5613, 5616, 5617, 5612 and 5614 of 2006 that since the accused had requested him not to file the complaint and he would repay the amount in due course, he had not chosen to file the complaint in time. But, though the reasons assigned by the complainant is feeble in nature, his remedy which he may get at the end of the trial shall not be denied. Therefore, to secure the ends of justice, this Court has thought it fit to reverse the impugned order."

(ii) Paragraphs 14 to 16 of the order dated 18.12.2014 made in Crl.OP.No.6944 of 2009 [A.Rahamathulla @ Maulana v. P.A.K.Manoharan] read thus:

"14. Now the question is whether, for the inadvertent error committed by the lower Court, the respondent should be allowed to suffer? In this regard, I may refer to the observations of the Honourable Supreme Court in State of Madhya Pradesh Vs. Pradeep Kumar and another (2000



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(IV) CTC 434), wherein in para 12, the Honourable Supreme Court has held as follows:

"12.It is true that the pristine maxim Vigilantibus Non Dormientibus Jura Subveniunt (Law assists those who are vigilant and not those who sleep over their rights). But even a vigilant litigant is prone to commit mistakes. As the aphorism to err is human is more a practical notion of human behaviour than an abstract philosophy, the unintentional lapse on the part of a litigant should not normally cause the doors of the judicature permanently closed before him. The effort of the court should not be one of finding means to pull down the shutters of adjudicatory jurisdiction before a party who seeks justice, on account of any mistake committed by him, but to see whether it is possible to entertain his grievance if it is genuine."

15. Similar view has been expressed by the Honourable Supreme Court in Sarah Mathew Vs. Institute of Cardio Vascular Diseases [(2014) 2 SCC 62] also and para 39 of the said order reads as follows:

"39.As we have already noted in reaching this conclusion, light can be drawn from legal maxims. Legal maxims are referred to in Bharat Kale, Japani Sahoo and Vanka Radhamanohari. The object of the criminal law is to punish perpetrators of crime. This is in tune with the well-known legal maxim nullum tempus aut locus occurrit regi, which means that a crime never dies. At the same time, it is also the policy of law to assist the vigilant and not the sleepy. This is expressed in the Latin maxim vigilantibus et non dormientibus jura subveniunt. Chapter XXXVI Cr.P.C. which provides limitation period for certain types of offences for which lesser sentence is provided draws support from this maxim. But, even certain offences such as Section 384 or 465 IPC, which have lesser punishment may have serious social consequences. The provision is, therefore, made for condonation of delay. Treating date of



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filing of complaint or date of initiation of proceedings as the relevant date for computing limitation under Section 468 of the Code is supported by the legal maxim *actus curiae neminem gravabit* which means that the act of court shall prejudice no man. It bears repetition to state that the court's inaction in taking cognizance i.e. Court's inaction in applying mind to the suspected offence should not be allowed to cause prejudice to a diligent complainant. Chapter XXXVI thus presents the interplay of these three legal maxims. The provisions of this Chapter, however, are not interpreted solely on the basis of these maxims. They only serve as guiding principles."

16. In view of the principles stated in these judgments, it is necessary for this Court to afford an opportunity to the respondent herein to go before the lower Court and to file a petition seeking condonation of the delay by showing sufficient cause. Similar view has been taken by this Court in *R.Kanthimathi and 2 others Vs. Bank of India, Dharmapuri Branch* (2007 (4) CTC 524). In view of the said settled position, I am of the view that in the instant case, the order of the learned Magistrate taking cognizance deserves to be set aside and the matter needs to be remanded back to the lower Court with a liberty to the respondent herein to file an appropriate petition seeking condonation of delay by showing sufficient cause. Thereafter, it may be appropriate for the lower Court to consider the same and proceed further in accordance with law."

and

(iii) In the order dated 10.09.2018 made in CrI.RC.No.374 of 2015 [*P.Kannan v. T.Mayilsamy*], it was held that "the length of delay is not important, what is important is reason for delay".

4. Despite the service of notice and the name of the respondent having been printed in the cause list, there is no representation on his behalf.



5. This Court has given its anxious consideration to the submissions made by the learned counsel for the petitioner and carefully perused the materials placed before this Court, including the decisions relied on the side of the petitioner.

6. Admittedly, the petitioner has filed the private complaint against the respondent for the offence under Section 138 of the Negotiable Instruments Act, with a delay of 199 days in preferring the same. It is stated in the affidavit filed in support of the condone delay petition that on the specific request made by the respondent that he would repay the cheque amount in due course, the petitioner did not file the complaint in time. Being dissatisfied with the reason so stated, the Court below has dismissed the said condone delay petition, stating that the Act mandates the complainant to file complaint once cause of action arises. Aggrieved over the same, the petitioner / complainant has preferred this Criminal Revision Case.

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 for 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 the 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 preferring 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 03.10.2019, passed by the learned Judicial Magistrate No.1, Tiruppur in CrI.MP.No.3461 of 2019. Consequently, the delay in filing 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, Coimbatore 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 Court below 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 (CS-III MDU)

//True copy//

Sub Assistant Registrar

av/rk

To

1.The Judicial Magistrate No.1, Tiruppur.

2.The District Legal Services Authority,
Coimbatore District

Copy To
The Section Officer,
Criminal Section, High Court, Madras.

+lcc to Mr.Deepan Uday, Advocate SR.No.18144

Cr1.R.C.No.1463 of 2019

SSV(CO)

GMV(13/07/2020)