

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.76 of 2021

Benny

... Petitioner

..vs..

1. M/s.M.A.Motor Works
represented by its Proprietor
Mr.Maharajan.

2. Maharajan ... Respondents

Criminal Revision Case filed under Section 397 read with 401 Cr.P.C, to set aside the order dated 28.02.2020 in C.M.P.No.381/2019 in F.No.736 of 2019 on the file of Judicial Magistrate cum Fast Track Court No.I, Coimbatore and grant such other relief.

For Petitioner : Mr. R.Rajarajan

O R D E R

This Criminal Revision Case has been filed to set aside the order dated 28.02.2020 in C.M.P.No.381/2019 in F.No.736 of 2019 on the file of Judicial Magistrate cum Fast Track Court No.I, Coimbatore.

2. The revision petitioner is the complainant. He filed private complaint against the respondent under section 138 of N.I Act before the Judicial Magistrate cum Fast Track Court No.I, Coimbatore and there was a delay of 16 days in filing the complaint, for which, the petitioner has filed Crl.M.P.No.381 of 2019 to condone the delay in filing the affidavit, in that petition. The said petition was dismissed by the Magistrate. Challenging the said order, the petitioner is before this Court.

3. The learned counsel for the petitioner would submit that the petitioner met with an accident and he was admitted in the hospital. Therefore, he could not present the complaint in time and there was delay of 16 days in filing the complaint. But on reading of the affidavit filed by the petitioner before the Magistrate, it is stated that the petitioner suffered from viral fever and taking treatment. Taking into consideration the said reasons, the learned Magistrate was not satisfied and found that the reasons were not substantiated.

4. While exercising revisionary jurisdiction, this Court has to see only as to whether there is any perversity or

illegality or infirmity in the order passed by the Court below. It is well settled proposition of law that condoning the delay is purely a discretionary power of the Court. If the Court while exercising the discretionary power, taken into consideration the facts and passed the order which cannot be said to be passed in an arbitrary manner unless it is established contrary.

5. The learned counsel for the petitioner has placed reliance on the judgement of the Honourable Supreme Court in the case of Criminal Appeal No.(S).868 of 2019 [@SLP(Crl) Nos.10811/2018] (Birendra Prasad Sah Vs. The State of Bihar and another]. There is no quarrel with the preposition of law laid down in the said judgment. The said case was relating to an order taking cognizance of an offence u/s.138 of N.I.Act, 1888. The decision in the said case is not applicable to the present case on hand. The Magistrate purely considered the affidavit filed by the petitioner/applicant and the reasons assigned have not been satisfied by the petitioner by giving any proof for the said reasons.

6. On a reading of the affidavit and also the order passed by the Magistrate, this Court does not find that the Magistrate exercised the discretionary power in an arbitrary manner or with malafide intention while dismissing the petition. In the absence of the same, this Court is not inclined to interfere with the order passed by the Magistrate. Further, this Court does not find any illegality or infirmity in the order passed by the Judicial Magistrate and there is no interference required. Therefore, finds no merits, the Criminal Revision case is dismissed in the admission stage itself.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mpa

To

The Judicial Magistrate cum Fast Track Court No.I,
Coimbatore.

+lcc to Mr.R.Rajarajan, Advocate, S.R.No.8939.

Crl. R.C.No.76 of 2021

VSN-II (CO)
CSR 22.03.2021