



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.11.2021

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.R.C.No.281 of 2020

C.A.Subramaniam,
S/o, Arthanari

... Petitioner

Versus

1.Hari Enterprises,
By its Prop/authorized signatory,
2-180-B, Nadu Veethi Periya Punavasal,
Attur Taluk,
Salem District.

2.Hari Enterprises,
Rep by its Prop/authorized signatory,
V.Manimekalai,
2-180-B, Nadu Veethi Periya Punavasal,
Attur Taluk,
Salem District.

... Respondents

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the order dated 26.07.2019 made in C.M.P.No.1 of 2019 in Un-numbered C.A.Sr.No.1973 of 2019 on the file of the Principal District Judge, Salem.

For Petitioner : Mr.T.S.Vijaya Raghavan

For Respondents : No appearance

ORDER

This Criminal Revision Petition has been filed seeking to set aside the order dated 26.07.2019 passed in C.M.P.No.1 of 2019 in Un-numbered C.A.Sr.No.1973 of 2019 on the file of the Principal District Court, Salem.

2. Brief facts of the case are as follows:

The petitioner is the complainant in S.T.C.No.1051 of 2016 filed against the respondent for the offence under section



138 of the Negotiable Instruments Act. The case after trial, had ended in acquittal. The petitioner had applied for certified copy of the judgment on 09.11.2018 and it was granted to him on 12.11.2018. Meanwhile, since the petitioner was suffering from jaundice and due to work pressure, he was unable to file the appeal in time and there was a delay of 71 days in filing appeal. The petitioner had filed CMP No.1 of 2019 to condone the delay of 71 days in filing the appeal. The Appellate Court finding that the petitioner had not filed any oral or documentary evidence to support his contention that he was suffering from jaundice, had dismissed the petition, against which, the present Revision Case has been filed.

3. Learned Counsel for the petitioner would submit that the petitioner is the Manager of Consolidated Hybrid Seeds Company. He had filed a complaint against the respondents for the offence under section 138 of the Negotiable Instruments Act, in respect of dishonored cheque to the tune of Rs.2,00,000/-. The trial court had acquitted the respondents/accused on 09.11.2018. The petitioner had applied for copy application on the same day and it was received by his counsel on 12.11.2018. Meanwhile, the petitioner fell ill and he was affected with jaundice and he was taking native treatment for the same and thereby, he was unable to contact his counsel for filing an appeal within time. He was also having other additional work, thereby also, he was unable to file the appeal within time.

4. Learned Counsel for the petitioner would further submit that since the petitioner was taking native treatment, he was unable to file necessary documents to support his case and moreover, the petitioner has also filed sworn affidavit before the concerned court in support of his claim, whereas, the Appellate Court wrongly holding that no oral evidence has been let in by the petitioner, had dismissed the petition. The learned counsel for the petitioner would submit that the petitioner has got fair chances of succeeding the appeal on merits and if the order is passed by the learned Judge in C.M.P.No.1 of 2019 in Un-numbered C.A.Sr.No.1973 of 2019 is not set aside and the delay is not condoned, the petitioner would be put to irreparable loss and hardship and he would seek to set aside the abovesaid order.

5. Despite service of notice on the respondents and their names being printed in the cause list, there is no representation for the respondents.

6. Heard the learned counsel for the petitioner and perused the materials on record.



7. It is the case of the petitioner that he was affected by jaundice and he was taking native treatment and thereby he was unable to file necessary medical certificates. The petitioner has filed a sworn affidavit before the court in support of the petition to condone the delay. This Court is of the opinion that the delay of 71 days is not excessive, the trial court ought to have allowed the application for condonation of delay.

8. In view of the above, the order dated 26.07.2019 passed in C.M.P.No.1 of 2019 in Un-numbered C.A.Sr.No.1973 of 2019 on the file of the Principal District Judge, Salem is set aside and the Appellate Court is directed to condone the delay and take the appeal on file. Accordingly, Criminal Revision Petition stands allowed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

mfa

To

1.The Principal District Judge,
Principal District Court,
Salem.

2.The Public Prosecutor,
High Court,
Madras.

+1cc to Mr.T.S.Vijaya Raghavan, Advocate Sr No.58444

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PCH (CO)
PR (03/12/2021)