



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.07.2021

PRONOUNCED ON : 18.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Cr1.R.C.No.510 of 2015

A.Paramasivam ...Petitioner/Accused
Vs.
K.Balasubramaniam ...Respondent/Complainant

Prayer: This Criminal Revision Case has been filed under Section 397 read with Section 401 of Cr.P.C., against the order dated 09.01.2015, passed by the learned Judicial Magistrate - I, Tiruppur, in C.M.P.No.4961 of 2013.

For Petitioner : Mr.R.Sivaprakasam
For Respondent : Mr.J.Franklin

JUDGMENT

(The case has been heard through Video Conference)

This Criminal Revision Case has been filed by the accused against the order passed by the learned Judicial Magistrate - I, Tiruppur, in C.M.P.No.4961 of 2013, dated 09.01.2015.

2.The respondent herein/complainant has filed a private complainant before the learned Judicial Magistrate No.I, Tiruppur, for the offence under Section 138 of the Negotiable Instruments Act, in respect of the cheque issued by the revision petitioner herein and he has also filed a petition in C.M.P.No.4961 of 2013, before the learned Judicial Magistrate No.I, Tiruppur, to condone the delay of 64 days in filing the complaint. After the contest, the learned Judge, by an order dated 09.01.2015, has allowed the condone delay petition and hence, the Criminal Revision Case.

3.Heard both the learned counsels and perused the materials placed on record.

4.On a perusal of the records, it is seen that while allowing the condone delay petition, the learned Judicial Magistrate has assigned the reason that a chance has to be given to the complainant to proceed with the case and accordingly, condoned the delay.



5. On a perusal of the affidavit filed before the learned Judicial Magistrate No.I, Tiruppur, in the petition to condone the delay, under Section 142(b) of Negotiable Instruments Act, the only reason assigned by the petitioner is that originally the cheque of the above case was misplaced in the complainant's house and could not be traced out the same and except the same no other reason has been given for the delay of 64 days. Further, the cheque is for a sum of Rs.16,00,000/- and no prudent man can misplace the cheque on such an huge amount so casually as pleaded. Admittedly, the notices have been exchanged between the parties and reply notice was also sent by the revision petitioner/accused on 03.07.2013. Thereafter, the complaint was not filed within the time limit and the complainant has not pleaded the sufficient cause for not filing the complaint in time.

6. The mandatory requirement under proviso to Section 142(b) of the Negotiable Instruments Act, to condone the delay is that the complainant should satisfy the Court that he had prevented from "sufficient cause" in filing the complaint within the stipulated time. Admittedly, there is no such plea in the affidavit filed before the Trial Court and in the absence of any such plea by the complainant, the Trial Court ought not to have condoned the delay.

7. Yet another point is that the complainant has not given the details of the date namely, the receipt of the demand notice by the accused, date on which the cause of action arose has not been stated in the complaint for calculating the number of days of the delay, except the oral submission that it was misplaced.

8. The trial Court should also bear in mind that when an offence, become time barred, a right is accrued to the accused, and as such, right has been accrued to the accused as such, such a right cannot be disallowed without valid reasons. In condone the delay petition nothing is whispered on the delay and hence, this Court find that the Trial Court ought not to have condone the delay and hence, in this view of the matter, this revision is allowed and order passed by the learned Judicial Magistrate No.I, Tiruppur, in C.M.P.NO.4961 of 2013, dated 09.01.2015 is set aside, consequently, complaint stands dismissed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar



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To:

The Judicial Magistrate - I, Tiruppur.

+1 CC to Mr.R.Sivaprakasam, Advocate, Sr 41859.

Cr1.R.C.No.510 of 2015

LN (CO)
LS (08/09/2021)