Crl.MP.No.3903 of 2021 in
Crl.O.P.No.16932 of 2010

A.D.JAGADISH CHANDIRA, J.,

The criminal miscellaneous petition has been filed, seeking to condone the delay of 1541 days for restoring the Crl.O.P.No.16932 of 2010 which was dismissed for non prosecution by order dated 25.11.2016.

2. The petitioner had filed a quash petition in Crl.O.P.No.16932 of 2010 against the C.C.No.5004 of 2010 pending trial on the file of the XVII Metropolitan Magistrate, Saidapet, Chennai, for offence under Section 138 of Negotiable Instruments Act. Thereafter, when the matter was listed for final hearing on 09.11.2016, there was no representation for the petitioner and the Counsel for the respondent was present and he was ready for arguing the matter. Thereby, this Court had posted the matter on 25.11.2016 under the caption "for dismissal or for disposal". Even then, when the matter was listed on 25.11.2016, the petitioner did not appear and thereby, this Court had dismissed the petition for non prosecution.

WEB COPY

3. The contention of the petitioner is that only after the receipt of notice from the respondent/complainant, she came to know that the Criminal Original Petition for quashing was dismissed for non prosecution

and thereafter, she had contacted her Advocate and there was no response from his side and thereafter, she had verified in the e-Court Services and finding that the Criminal Original Petition had been dismissed for non prosecution has filed the present petition.

4. The learned Counsel for the respondent would submit that the C.C. is of the year 2010 and the petitioner had filed the Crl. O.P.No.16932 of 2010 during the year 2010 and only after 6 years, the matter was posted for final disposal. Since, neither the petitioner nor her Counsel appeared before the Court, this Court had after giving sufficient opportunity and after listing the matter under the caption "for dismissal" had dismissed the petition for non prosecution as early as on 25.11.2016. Even thereafter, the petitioner did not pursue the matter and only when the matter was taken up for trial before the lower Court, she has filed the petition for restoration, after a period of period of 5 years. He would further submit that no valid reason or sufficient cause has been stated by the petitioner in the supporting affidavit filed seeking to condone the delay and he would object for the petition for condoning the delay being allowed.

5. Heard the learned Counsels and perused the affidavit.

WEB COPY

WEB COPY

6. It is the C.C. of the year 2010. The petitioner had filed the Crl.O.P.16932 of 2010 during the year 2010 and it had been dismissed by this Court for default on 25.11.2016 only after giving sufficient opportunity and listing the matter under the caption “for dismissal”. It is for the petitioner to have followed her case vigilantly and earnestly, whereas though the petition had been dismissed on 25.11.2016, the petition to condone the delay has been filed only on 10.03.2021 after a period of 5 years and that no sufficient cause has been stated in the affidavit filed to condone the delay and thereby, this Court is not inclined to allow the petition.

7. At this juncture, the learned Counsel for the petitioner would submit that the petitioner had raised a valid ground in the quash petition that the amounts covered under the cheque have been returned by her even before the issuance of legal notice by the respondent/complainant.

8. This Court is of the opinion that the grounds raised by the petitioner are matter for trial and the complaint cannot be quashed at the initial stage. It is left open to the petitioner to prove her case by letting evidence at the appropriate stage. Since there is no merits in the petition, the petition to condone the delay in restoring the Crl.O.P.No.16932 of 2010 is dismissed.

WEB COPY

9. However, since the C.C. is of the year 2010 (C.C.No.5004 of 2010), the trial Court shall accord priority to this case and complete the trial as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order.

10. At this juncture, the learned Counsel for the petitioner would submit that the petitioner is a lady and her presence before the trial Court may be dispensed with.

11. Accepting the said above submission, the presence of the petitioner before the trial Court shall be dispensed with on condition that she shall be present on the first day of appearance, on the date fixed for receiving the copies, initial questioning, reply to charges and questioning under Section 313 of Cr.P.C., and at the time of passing judgement and whenever insisted upon by the trial court.

WEB COPY

12.The petitioner is further directed to give an undertaking in the form of affidavit that she will be duly represented by a counsel on all hearing dates and that the Counsel representing her will cross examine the prosecution witnesses on the same day they are examined in chief. The petitioner shall not dispute the identity of the witnesses. The petitioner

shall appear before the Court in the event her presence is insisted by the trial judge for the purpose of identification. If the petitioner adopts any dilatorial tactics, it is open to the Trial Court to insist for her appearance and deal with the petitioner in accordance with the judgment of Supreme Court of India, ***in State of Uttar Pradesh Vs. Shambunath Singh***, reported in ***2001 (4) SCC 667.***

13. With the above observations, the Criminal Miscellaneous Petition is disposed of.

30.03.2021

ksa-2

WEB COPY

A.D.JAGADISH CHANDIRA, J.,

ksa-2

HIGH COURT OF JUDICATURE MADRAS
सत्यमेव जयते
WEB COPY

Crl.MP.No.3903 of 2021
and
Crl.O.P.No.16932 of 2010

30.03.2021