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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	**17.03.2021**
DELIVERED ON	**01.04.2021**

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

Crl.RC(MD)No. 713 of 2016

1. M. Padmini
2. P. Malaisamy ...Petitioners/Respondents/A-1 & A-2

Vs.

P. Manikandan ...Respondent/Petitioner/Complainant

PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records relating to order passed by the learned Judicial Magistrate No.II, Karur in Crl.M.P. No.2036 of 2016 in C.C. No. 278 of 2016 dated 09.09.2016 and set aside the same and allow the said petition.

For Petitioners : Mr.N. Dilip Kumar
For Respondent : Mr.N. Shanmuga Selvam

O R D E R

The Criminal Revision Petition has been filed by the revision petitioners to set aside the order, dated 09.09.2016 in Crl.M.P. No.2036 of 2016 in C.C. No. 278 of 2016 passed by the learned Judicial Magistrate No.II, Karur.

2. The respondent/complainant has filed a petition in Crl.M.P. No.2036 of 2016 in C.C. No. 278 of 2016 on the file of the learned Judicial Magistrate No.II, Karur, to condone the delay of 17 days in filing the complaint. The aforesaid petition was allowed on 09.09.2016 on condition that the respondent herein shall pay a sum of Rs.1,000/-as costs to the petitioners/A-1 & A-2 on or before 15.09.2016. On 16.09.2016, the learned counsel appearing for the respondent has filed a memo stating that the cost was paid, but the revision petitioners have refused to receive the cost of Rs.1,000/- the sum was deposited in Court and the petition was allowed. Aggrieved over the same, the revision petitioners have preferred the Criminal Revision case.

3. The learned Counsel for the petitioners submitted that the Court below has not considered the sufficiency of the cause shown by the complainant to take cognizance beyond the prescribed period.

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He further submitted that the Court below failed to consider that the complainant failed to produce any material to substantiate his reason for the delay. He further submitted that the Court below has failed to consider that the respondent has not produced any documentary evidence to prove that he was suffering from viral fever during the subject period. Therefore, he prays for allowing this petition.

4. Per contra, the learned counsel appearing for the respondent submitted that the delay of 17 days in filing the petition before the Court below, because the petitioner was suffering from viral fever since January 2016. Therefore, he prays to dismiss the Criminal Revision case.

5. Heard the learned Counsel appearing for the respective parties and also perused the available materials.

6. The petitioners/A-1 & A-2 have filed this Revision case to set aside the order, dated 09.09.2016 in Crl.M.P. No.2036 of 2016 in C.C. No. 278 of 2016. passed by the learned Judicial Magistrate No.II, Karur.

7. The respondent/petitioner/complainant had filed a petition in Crl.MP No.2036 of 2016 to condone the delay of 17 days in filing a complaint under Section 138 of Negotiable Instruments Act. The reason for the delay in filing a petition is that he was suffering from Viral fever since January 2016. The petitioner/respondent has objected that there is no sufficient reason.

8. The ingredients of ***Section 142(b) of Negotiable Instruments Act*** is extracted hereunder:

> "***142. Cognizance of Offences*** : Notwithstanding anything contained in the Code of Criminal Procedure, 1973.
>
> *(a). no Court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;*
>
> *(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138;*
>
> *[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complaint satisfies the Court that he had sufficient cause for not making a complaint within such period;]* "

9. The delay is only 17 days in filing the petition. All other contentions raised by the petitioner could be raised and decided in the case. No prejudice would be caused to the petitioner.

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Therefore, there is no valid reason to interfere with the findings of the Court below.

10. Taking note of the above facts and circumstances, this Criminal Revision Case stands dismissed and the Order, dated 09.09.2016 in Crl.M.P. No.2036 of 2016 in C.C. No. 278 of 2016. passed by the learned Judicial Magistrate No.II, Karur, is hereby confirmed. No Costs.

Sd/-

Assistant Registrar(CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The Judicial Magistrate No.II, Karur.

2. The Chief Judicial Magistrate, Karur.

3. The Additional Public Prosecutor,
   Madurai Bench of Madras High Court,
   Madurai.

4. The Section Officer, Criminal Section,
   Madurai Bench of Madras High Court,
   Madurai. (2 copies)

+1 CC to M/s.N.DILIPKUMAR, Advocate (SR-15191[F] dated 01/04/2021)

Order made in
Crl.RC(MD)No. 713 of 2016
01.04.2021

SSS(CO)
TR(04.05.2021) 3P 7C

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