

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2022

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.21598 of 2019
and
Crl.M.P.No.11185 of 2019

S.Ganesh

... Petitioner

Vs.

P.Rajendran

... Respondent

Prayer: Criminal Original Petition is filed under section 482 of CR.P.C., to set aside the order passed in C.M.P.No.2929 of 2017 dated 28.06.2019 in unnumbered STC case on the file of learned Judicial Magistrate, Kangeyam.

For Petitioner : Mr. S. Bharanidharan
for Mr. B.Mohan

For Respondent : No Appearance

O R D E R

This original petition is filed to set aside the order passed by the Judicial Magistrate, Kangeyam allowing Crl.M.P.No.2929 of 2017 filed for condonation of 1248 days delay in representation of the complaint filed under Section 138 of Negotiable Instruments Act.

2. Heard, the learned counsel for the petitioner. There is no representation for the respondent in spite of notice.

3. The short point involved in this case is that the cheque dated 19.03.2013 for Rs.5 lakhs alleged to have been issued by this petitioner and the same was returned on 22.03.2013 for insufficiency of the fund and on receipt of the memo from the Bank, the respondent has caused statutory notice dated 30.05.2013 to the petitioner. The statutory notice has been returned as 'refused' and thereafter, a complaint has been presented on 02.07.2019 which is within the time prescribed under the statute. However, the complaint being filed with defects, it was returned twice. The last return was on 11.11.2013. The complaint had represented the same on 28.06.2019 with a delay of 1,248 days, along with an application

to condone the delay, stating that his father was hospitalised for chronic illness and died on 12.04.2014 and therefore, till that date he was attending his ailing father and could not follow up the private complaint.

3(i). The trial Court, following the dictum of A.Vinayaham Vs. Dr.Subash Chandran and Others reported in 2000(I) CTC 225 (Mad). had allowed the petition solely on the ground that the petitioner has given a plausible and satisfactory explanation for the delay in representation. Further, it observed that the trial Court has returned the complaint nothing the defect, but has not specified time limit for its representation. Therefore, question of delay in representation will not arise.

For convenience sake, the relevant paragraph relied by the trial Court is extracted below:-

"....Even if they can be termed to be the judicial orders, they were completely without jurisdiction as we have already shown. Not only this, the Magistrate, fixing their own procedure, also chose to return the complaints and again without fixing the date for re-presentation of the complaints. If then the complainant chose his time to re-present the complaint could be complainant be blamed. It is the cardinal principle of law that the act of court should not prejudice any one - "Actus cruise neminem Gravabit". The Supreme Court has reiterated this principle in Jang Singh v. Brinjlal and Other. There the Supreme Court had refused to find fault with a party, who had made short payment by one rupee, for which the court was responsible. We would choose the same course by holding that once the complaints were filed within limitation, merely because the Magistrates, completely contrary to the procedure known to law, chose to return the same without fixing the date for re-presentation, it should not be held that the subsequent filing by the complainants would be held to be beyond limitation."

4. This Court wish to point out that it is a private complaint under Section 138 of Negotiable Instruments Act in respect of the cheque issued to discharge the loan amount but bounced. Under 138 of Negotiable Instruments Act, the Specific time limit is prescribed for filing complaint and there is also provision to condone delay in filing the petition. However, the complainant cannot take advantage of the fact that there is no time limit prescribed for representation of the returned complaint and can represent the complaint with a delay of 1248 days, which is inordinate and also not properly explained, except, death certificate of his father.

5. One has to take note of the fact that in a criminal prosecution under Section 138 of Negotiable Instruments Act, the accused who is burdened with statutory presumption is put to trial, if he fails to prove his innocence, he will be punished. Under such circumstances, a complaint if taken cognizance after nearly 42 months delay, the valuable right of the accused to put forth his defence effectively will be taken away. Even looking from another angle, the cheque is alleged to have been given to discharge a debt. For recovery of money, the time limit to prefer suit is three years from the date of cause of action / money payable. Here is a case where the cheque dated 19.03.2013 sought to be realised but could not fructify due to want of fund.

6. In such circumstances, because there is no statutory limitation prescribed for representation, inordinate and unexplained delay of 1248 days cannot be condoned. The interest of justice has to be taken note off while subjecting a person for a criminal trial. Under Section 138 of Negotiable Instruments Act, the punishment may extend of two years imprisonment or with fine which may extend to twice the amount of cheque. Section 468 of Cr.P.C., prescribes limitation for instituting criminal action. Any offence punishable up to three years of imprisonment, the period of limitation is three years to take cognizance of the offence. Considering the delay, the debt has become not legally enforceable.

7. In the instant case, though the complaint was presented in time, it was not taken cognizance since the complaint was defective. If the delay is condoned and the cognizance taken after 1248 days, it will amount to enforce a debt crystallised more than three years ago. Even from that angle, the order of the trial Court fails to satisfy the legal requirement.

8. For the said reason, this Court finds force in the submission of the learned counsel for the petitioner. The order of the trial Court in Crl.M.P.No.2929 of 2017 on the file of Judicial Magistrate, Kangeyam. is set aside. Accordingly, this petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-VII)

//True copy//

Sub Assistant Registrar

AT

To

1.The Judicial Magistrate, Kangeyam.

Cr1.O.P.No.21598 of 2019 and
Cr1.M.P.No.11185 of 2019

GPL (CO)
GMY (25/07/2022)

