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CrI.R.C.No.1182 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.1182 of 2017

M/s.Lucky Yarn Tex India Limited,
Carrying on Business at
S.F.No.35/2, Anangur Road,
Nettavelampalayam,
Tiruchengode Taluk,
Namakkal District.
Represented by its Manager,
M.Thirugnanasambandam.

... Petitioner

Vs.

M.Bharathi

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to set aside the order of dismissal in the order dated 08.06.2017 made in C.M.P.No.127 of 2016 on the file of the Judicial Magistrate, Tiruchengode by allowing this petition.

For Petitioner : Mr.M.Guruprasad

For Respondents : Mr.N.Manokaran

ORDER

This Criminal Revision Case has been filed to set aside the order of dismissal, dated 08.06.2017, made in C.M.P.No.127 of 2016 by the learned Judicial Magistrate, Tiruchengode.



2.The petitioner/complainant has filed a private complaint before the learned Judicial Magistrate, Tiruchengode, for offence under Section 138 of the Negotiable Instruments Act, 1881 (Hereinafter referred to as 'Act')against the respondent/accused with delay. To condone the delay of 62 days, he filed a petition under Section 142(b) of the Negotiable Instruments Act, 1881 in C.M.P.No.127 of 2016. The learned Judicial Magistrate, Tiruchengode, by order, dated 08.06.2017, dismissed the petition, against which the present Criminal Revision Case.

3.The learned counsel for the petitioner submitted that in this case, statutory notice was issued by the petitioner on 12.05.2015, which was received by the respondent on 14.05.2015. As per Section 138(c) of the Act, the cause of action would arise when the drawer of the cheque fails to make payment of the cheque amount to the payee within 15 days of the receipt of the legal notice. Hence, the date of receipt of the notice by the respondent is very important for filing a complaint without any delay, if the respondent fails to give reply for the legal notice. He further submitted that the respondent had sent a reply to the petitioner on 27.05.2015. On the date of receipt of the reply by the accused, the limitation period cannot be calculated. Hence, the date of reply of legal notice of the accused cannot be calculated for the purpose of limitation. In this case,



the cause of action arose on 30.05.2015, i.e., 15th day of the receipt of the legal

notice. Within 30 days from the date of cause of action, the petitioner ought to have filed a complaint before the learned Judicial Magistrate, Tiruchengode i.e., on or before 29.06.2015, but the complaint was filed by the petitioner on 31.08.2015, for the reason that the case records and other papers got mixed up. With great difficulty, it was traced out, due to which, the delay occurred. On that ground, the petitioner filed a petition before the learned Judicial Magistrate, Tiruchengode to condone the delay in filing the complaint. The learned Magistrate dismissed the petition on the ground that the petitioner was aware about the reply of the respondent dated 27.05.2015 and also aware about the date of cause of action i.e., on 30.05.2015. Within two or three days, the petitioner ought to have filed a complaint before the Court, on the other hand taken his own time and filed the complaint with a delay of 62 days. The ground for dismissal of the petition in C.M.P.No.127 of 2016 is not acceptable.

4.The learned counsel further submitted that in the complaint, there is no deliberation about the reply given by the respondent. The finding of the trial Court is not proper and the delay in filing of the complaint by the petitioner ought to have been condoned. Likewise, the resolution for authorizing the Manager of the petitioner company M.Thirugnanasambandam to file a



complaint was done on 21.07.2017. Hence, he prayed for setting aside the order of the Court below.

5.In support of his submissions, the learned counsel for the petitioner relied on the decision of the Hon'ble Apex Court in the case of “**Birendra Prasad Sah Versus State of Bihar and another reported in (2019) 7 SCC 273**” and the relevant portion is extracted as follows:-

“7.In the present case, the facts narrated above indicate that the appellant issued a legal notice on 31-12-2015. This was within a period of thirty days of the receipt of the memo of dishonour on 4-12-2015. Consequently, the requirement stipulated in proviso (b) to Section 138 was fulfilled. Proviso (c) spells out a requirement that the drawer of the cheque has failed to make payment to the holder in due course or payee within fifteen days of the receipt of the notice. The second respondent does not as a matter of fact, admit that the legal notice dated 31-12-2015 was served on him. The appellant has in the complaint specifically narrated the circumstance that despite repeated requests to the Postal Department, no acknowledgment of the notice was furnished. It was in these circumstances that the appellant issued a second notice dated 26-2-2016. Cognizant as we are of the requirement specified in proviso (b) to Section 138, that the notice must be issued within thirty days of the receipt of



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the memo of dishonour, we have proceeded on the basis that it is the first notice dated 31-12-2015 which constitutes the cause of action for the complaint under Section 138.

8.The complaint was instituted on 11-5-2016. Under Section 142(1), a complaint has to be instituted within one month of the date on which the cause of action has arisen under clause (c) of the proviso to Section 138 [“142. Cognizance of offences. —(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—(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 complainant satisfies the court that he had sufficient cause for not making a complaint within such period;(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under Section 138.”] . The proviso however stipulates that cognizance of the complaint may be taken by the court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period. Both in Paras 7 and 8 of the complaint, the appellant indicated adequate and sufficient



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reasons for not being able to institute the complaint within the stipulated period. These have been adverted to above. The CJM condoned the delay on the cause which was shown by the appellant for the period commencing from 6-4-2018. However, if Paras 7 and 8 of the complaint are read together, it is evident that the appellant had indicated sufficient cause for seeking condonation of the delay in the institution of the complaint. The High Court has merely adverted to the presumption that the first notice would be deemed to have been served if it was dispatched in the ordinary course. Even if that presumption applies, we are of the view that sufficient cause was shown by the appellant for condoning the delay in instituting the complaint taking the basis of the complaint as the issuance of the first legal notice dated 31-12-2015.”

6.The learned counsel for the respondents/accused submitted that the learned Judicial Magistrate, Tiruchengode dismissed the condone delay petition filed by the petitioner, by order, dated 08.06.2017. The petitioner has not come with the clean hands before this Court as well as before the Court below. Though the petitioner had sent a legal notice on 12.05.2015 to the respondent, he should have been vigilant in lodging the complaint before the period of limitation. As per the General Clauses Act, it is only on the date of despatch of the legal notice known to the complainant, to be calculated. He further



submitted that the deemed service of legal notice to be calculated from the date of despatch of legal notice. From thereon, the limitation period ought to have been calculated and it would be appropriate that the complaint could have been filed within 45 days from the date of receipt of the legal notice and not awaited for the date of receipt of legal notice. On the date of receipt of reply of the respondent, the petitioner was aware that the notice was already served to the respondent. Now, the petitioner giving such explanation in his submissions is not proper and the records pertaining to this case have been misplaced is also not acceptable. The learned Magistrate finding that the affidavit filed for condonation of delay did not contain proper and acceptable details and the petitioner was not come with clean hands, had dismissed the petition, which needs no interference of this Court.

7. In support of his submissions, the learned counsel relied on the decision of the Hon'ble Apex Court in the case of ***“Mohd.Sahid and others Versus Raziya Khanam (dead) through Legal Representatives and others reported in (2019) 11 SCC 384”*** and the relevant portion is extracted hereunder:-

“19.The order-sheet and other materials placed on record clearly show that the appellants had full knowledge about the proceedings of Original Suit No. 591 of 1979 and also about the



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disposal of Writ Petition (C) No. 19550 of 1985 and the appellants have filed application for condonation of delay with incorrect facts. Both the first appellate court and the High Court recorded concurrent findings that the appellants have filed the application for condonation of delay with incorrect facts and were negligent in pursuing the matter and rightly refused to condone the delay. We do not find any perversity or infirmity in the impugned order warranting interference and the appeal is liable to be dismissed.”

8.The above decision of the Hon'ble Apex Court is followed by this Court in the case of “***V.Sureshkumar Versus M.Parvathi*** reported in ***MANU/TN/6489/2020***” and the relevant portion is extracted as follows:-

“10.In dealing with an application for condonation of delay, the Hon'ble Supreme Court in Mohd. Sahid and Ors. vs. Raziya Khanam (D) thr. Lrs. and Ors., reported in MANU/SC/1148/2018 : 2019 (11) SCC 384, had held that if incorrect averments are made before the Court as reasons for the delay, the application for condonation of delay has to be rejected. While doing so, the Hon'ble Mrs. Justice R. Banumathi, held as follows:-

“16. After referring to the order sheets dated 11.10.2011 and 18.10.2011 and the subsequent hearings in the Suit No. 591 of 1979, the First Appellate Court as well as the High Court rightly



recorded concurrent findings that the Appellants had full knowledge about the proceedings of the original Suit No. 591 of 1979 and also about the vacation of stay order passed in Writ Petition(C) No. 19550 of 1985. The High Court has rightly observed that the Appellants-Defendants have not come out with the correct facts.

19. The order sheet and other materials placed on record clearly show that the Appellants had full knowledge about the proceedings of the Original Suit No. 591 of 1979 and also about the disposal of the Writ Petition(C) No. 19550 of 1985 and the Appellants have filed application for condonation of delay with incorrect facts. Both the First Appellate Court and the High Court recorded concurrent findings that the Appellants have filed the application for condonation of delay with incorrect facts and were negligent in pursuing the matter and rightly refused to condone the delay. We do not find any perversity or infirmity in the impugned order warranting interference and the appeal is liable to be dismissed.””

9.This Court considered the rival submissions and perused the materials available on record.

10.It is seen that the petitioner is prosecuting the respondent under the Provisions of the Negotiable Instruments Act, 1881. Section 142 of the Act is a deemed offence. The presentation of the cheque and issuance of legal notice are all time bounded one. As per Section 142 of the Act, the condition have to be



completed within the prescribed period for taking cognizance of the offence. As

per Section 142(b) of the Act, it is within one month from the date of cause of action would arise. Section 138(c) of the Act states that if the drawer of the cheque fails to make payment of the said amount of money to the payee within 15 days of the receipt of the said notice. So the cause of action would arise one month from the date of receipt of the reply of the accused. Within that period the complaint to be filed before the concerned jurisdictional Magistrate. In such circumstances, as per the Proviso to Section 142(b) of the Act, the complaint can be taken after the prescribed period if the complainant satisfied the Court that he had sufficient cause for not making the complaint in such period. In this case, the petitioner/complainant had stated about non-receipt of proof of delivery of legal notice from the Postal Department as well as the documents pertaining to this case got misplaced.

11.Thus, the petitioner had no intention to suppress about the reply of legal notice issued by the respondent as could be seen from the paragraph No.7 complaint filed before the learned Magistrate. In paragraph No.7, the receipt of the reply notice dated 27.05.2015 is referred as well as it has been listed as document No.8 in the complaint. Hence, the explanation offered by the learned counsel for the petitioner for not filing the complaint within a prescribed period



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is acceptable one, which was not considered by the learned Magistrate while deciding the petition for condonation of delay in C.M.P.No.127 of 2016 and it needs interference of this Court.

12.In view of the above, the order, dated 08.06.2017, made in C.M.P.No.127 of 2016 by the Judicial Magistrate, Thiruchengode is set aside and this Criminal Revision Case is, accordingly, allowed.

13.The learned Judicial Magistrate, Tiruchengode to take the complaint of the petitioner on file and proceed with the trial. Since the case has been pending for seven years in pre-cognizance stage, the learned Magistrate to proceed with the case on a day to day basis and conclude the trial, within a period of three months, from the date of receipt of a copy of this order.

14.02.2022

Speaking Order/Non Speaking Order

Index : Yes/No

Internet : Yes/No

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To

The Judicial Magistrate Court,
Tiruchengode.



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