



Crl.R.C.No.1353 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

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L.S. Shanmugasundaram,
S/o.S.P.Kandasamy,
S.B.A. Associates,
150 D Rithanya Illam,
Sri Arul Nagar 1st Street,
Keel Thindal,
Erode – 638 12

... Petitioner/Complainant

Versus

G. Karthikeyan,
Proprietor,
Shri Balaji Wealth Management,
352, Brough Road,
3rd Floor, Reymonds Buildings,
Erode – 638 001.

... Respondent/Accused

PRAYER : Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. to call for the records relating to order dated 26.07.2017 made in C.R.P.No.49 of 2016 on the file of the learned II Additional Sessions Court,



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Erode reversal of the order dated 15.11.2016 made in Crl.M.P.No.2298 of 2016 in S.T.C.No.1224 of 2011 on the file of the learned Chief Judicial Magistrate, Fast Track Court No.II, Erode and set aside the same by allowing this Criminal Revision.

For Petitioner : Mr.T.Balaji
For Respondent : Mr.M.Guruprasad

ORDER

This Criminal Revision Case has been filed to call for the records relating to order dated 26.07.2017 made in C.R.P.No.49 of 2016 on the file of the learned II Additional District and Sessions Court, Erode, reversing the order dated 15.11.2016 made in Crl.M.P.No.2298 of 2016 in S.T.C.No.1224 of 2011 on the file of the learned Chief Judicial Magistrate, Fast Track Court No.II, Erode and set aside the same.

2. The petitioner/complainant filed a complaint under Section 138 of the Negotiable Instruments Act against the respondent before the learned Judicial Magistrate No.I, Erode in S.T.C.No.1224 of 2011. Thereafter, by order dated 14.10.2014, it was directed to be represented before the Court



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within the jurisdiction of the complainant's bank as per the decision of the Hon'ble Apex Court in the case of ***Dashrath Rupsingh Rathod vs. State of Maharashtra and another.*** The complaint along with the documents filed by the complainant were returned to the complainant for filing it in the proper Court within a period of thirty days. Thereafter, the petitioner filed a petition in Crl.M.P.No.2298 of 2016 before the learned Chief Judicial Magistrate, Erode to condone the delay of 635 days in representing the complaint. The learned Chief Judicial Magistrate by its order dated 15.11.2016, condoned the delay, against which, the respondent/accused preferred a revision before the II Additional District and Sessions Judge, Erode in C.R.P.No.49 of 2016. The revision was allowed by order dated 26.07.2017 for the reason that the petitioner had not given the name of the counsel, who filed the complaint before the Magistrate Court. Aggrieved by the said order, the petitioner/complainant has filed this revision.



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3. The contention of the petitioner is that the respondent borrowed a sum of Rs.8,89,600/- for his business needs and promised to repay the same and in discharge of the said liability, he issued a cheque for the said amount, which on presentation was dishonoured for the reasons “Funds insufficient”. Thereafter, following the procedure, statutory notice was issued and thereafter, complaint was filed before the learned Judicial Magistrate No.I, Erode on 09.09.2011 within time. The accused appeared, executed bond and participated in the trial. Thereafter, there have been periodical adjournments. Thereafter, on 14.10.2014, the learned Judicial Magistrate No.I, Erode returned the complaint directing the complainant to file the same before the concerned Court within 30 days as per the direction of the Hon'ble Apex Court, wherein it is stated that the complaint under Section 138 of N.I. Act to be normally filed before the jurisdiction Court, where the complainant bank is situated.



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4. The learned counsel for the petitioner submitted that the petitioner's counsel before the trial Court one Mr.Anand neither took return of the complaint and filed it before the appropriate Court nor inform the same to the petitioner. The petitioner came to know about the same only during March, 2016. Immediately, the petitioner approached the said Advocate Anand to return the bundle, who failed to do so. Thereafter, the petitioner lodged a complaint with the Advocate Association, Erode on 27.05.2016 seeking return of bundle with original cheque and change of vakalat. Thereafter, the bundle and change of vakalat was handed over to the petitioner. On 01.06.2016, the petitioner sent a letter to the Advocate Association seeking no further action against the Advocate Anand. The petitioner thereafter engaged another Advocate, namely, Mr.S.Devarajan and filed a petition before the learned Chief Judicial Magistrate, Erode with condone delay petition. Due to the above said reasons, a delay of 635 days occurred. This delay is permissible as per Section 142(b) of Negotiable



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Instruments Act as well as Section 5 of the Limitation Act. The respondent/accused received notice and one Mr.Arulchelvan, Advocate filed vakalat for the respondent on 22.09.2016. Thereafter, condone delay petition was argued at length with the objections of the respondent and finally, the concerned Court by order dated 15.11.2016 finding that the delay is reasonable, imposed a cost of Rs.1,000/- to the petitioner/complainant and condoned the delay. The cost has been paid on 25.11.2016 to the respondent, which was also recorded. Despite receipt of the cost, the respondent filed a revision in C.R.P.No.49 of 2016 before the II Additional District and Sessions Judge, Erode. The learned Sessions Judge by order dated 26.07.2017 allowed the revision. Hence, the petitioner/complainant came before this Court with the above revision.

5. The learned counsel further submitted that for substantial justice, the revision to be allowed and also a direction to be issued to the trial Court



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to complete the trial within a stipulated period, since the case is pending from the year 2011.

6. Learned counsel for the respondent submitted that on receipt of the summons from the learned Judicial Magistrate No.I, Erode, the respondent participated in the trial. Thereafter, the learned Judicial Magistrate, by order dated 14.10.2014, directed the petitioner to present the complaint before the appropriate Court within a period of 30 days. The petitioner failed to do so and with an inordinate delay of 635 days, he presented the complaint before the learned Chief Judicial Magistrate, Erode. The respondent made an objection in the condone delay petition. The learned Chief Judicial Magistrate without properly considering the objection, allowed the condone delay petition with cost of Rs.1,000/-. Aggrieved against the same, the respondent filed a revision before the II Additional District and Sessions Judge, Erode. The learned Sessions Judge rightly found that the



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condone delay petition is without merits, allowed the revision, against which, the petitioner filed the present revision, which is nothing but a second revision and prayed for dismissal of the present petition to confirm the orders of the Sessions Judge.

7. Considering the submissions and on perusal of the material it is seen that the petitioner is a complainant under Section 138 of the Negotiable Instruments Act. The cheque amount is Rs.8,89,600/-. The petitioner without any delay filed the complaint before the learned Judicial Magistrate No.II, Erode and the same was taken on file in S.T.C.No.1224 of 2011. The complaint was filed on 09.09.2011 and thereafter it was periodically adjourned. The respondent/accused not appeared before the Lower Court on 24.02.2012, hence, bailable warrant was issued against the accused and thereafter, the respondent/accused on 12.06.2012 surrendered and furnished sureties. Thereafter, participated in the trial. Finally, on 14.10.2014, in view



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of the directions of the Hon'ble Apex Court, the complaint was returned with condition that the complaint to be filed within 30 days before the appropriate Court.

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8. The erstwhile counsel of the petitioner one Mr.Anand failed to collect the return of the complaint along with original cheque and hand over it to the petitioner. He also failed to inform the petitioner of the same. With great struggle the petitioner was able to collect the complaint copy and documents from Anand, Advocate, after giving complaint on 27.05.2016 to the Advocate's Association, Erode. Thereafter, on 01.06.2016, the petitioner given a letter to the Advocate's Association, seeking no further action against the said Anand after receipt of vakalat and copy of the cheque. Thereafter, the petitioner filed a condone delay petition with 635 days delay before the Chief Judicial Magistrate, Erode to condone the delay and forward the complaint to the appropriate Court. The learned Chief Judicial Magistrate after giving



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notice to the accused, after hearing both the sides, by a reasoned order dated 15.11.2016, condoned the delay and imposed a cost of Rs.1,000/- to the petitioner. It was received by the respondent/accused on 25.11.2016. After receipt of the cost, the respondent/accused filed revision in C.R.P.No.49 of 2016 before the II Additional District and Sessions Judge, Erode. The learned Session judge, by order dated 26.07.2017, allowed the revision for the reason that the name of the advocate, who caused the delay, not provided and also the complaint copy filed with the Advocates' Association not produced.

9. As per Section 142(b) of the N.I. Act delay can be condoned by the concerned Court in proceedings under Section 138 of N.I. Act. In this case the reason for the delay seems to be reasonable and the learned Chief Judicial Magistrate, by order dated 15.11.2016, rightly condoned the delay. The interference by the Sessions Court is not proper, sustainable and substantial justice have to be done. In this case, no order passed behind the



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respondent/accused and he participated in all the proceedings. The cost has been paid to the respondent on 25.11.2016. The respondent also received the cost of Rs.1,000/- and thereafter raising objection by way of revision is improper. In the order dated 26.07.2017, passed by the learned II Additional District and Sessions Judge, there is no mention with regard to the receipt of cost.

10. In view of the same, this Court finds that the order passed by the learned II Additional District and Sessions Judge, Erode in C.R.P.No.49 of 2016 dated 26.07.2017 is not sustainable and the same is hereby set aside. The complaint filed by the petitioner is restored to the file of Judicial Magistrate, Fast Track Court No.II, Erode in S.T.C.No.656 of 2016 (present S.T.C.No.) to proceed with the trial. Finding that the case is pending from the year 2011, this Court directs the trial Court to complete the trial within a period of three months from the date of receipt of a copy of this order.



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M.NIRMAL KUMAR, J.

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In the result, this Criminal Revision Case is Allowed.

23.12.2022

Index: Yes/No

Internet: Yes/No

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To

1.The II Additional Sessions Court,
Erode.

2.The Chief Judicial Magistrate,
Erode.

3.The Judicial Magistrate,
Fast Track Court No.II, Erode.

4.The Public Prosecutor,
High Court, Madras.

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