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CrI.R.C.No.70 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

**CrI.R.C.No.70 of 2021**  
**and CrI.M.P.No.1255 of 2021**

M.Kamalesh Kumar

... Petitioner

Vs.

T.Gandhi

... Respondent

PRAYER: Criminal Revision Case is filed under Section 397 read with 401 of Criminal Procedure Code, 1973, to allow the Criminal Revision by setting aside the order made in CrI.M.P.No.2087 of 2019, dated 05.12.2020 on the file of the District Munsif Court cum Judicial Magistrate Court, Arcot, Vellore District.

For Petitioner : Mr. A.Sivaji

For Respondents : Mr. K.Hemanathan  
Legal Aid Counsel

**ORDER**

The petitioner/proposed accused has challenged the order passed in C.M.P.No.2087 of 2019, dated 05.12.2020, by the District-Munsif-cum Judicial Magistrate, Arcot.



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2. The contention of the petitioner is that the respondent/complainant had not come with clean hands and in the delay condonation petition, the respondent had projected the number of days delay as six days delay but in fact it was 9 days delay. Further, the Lower Court ought to have returned the petition or corrected the delay, but on its own had condoned the delay. The Apex Court as well as this Court had held in several cases that in condone delay petition each and every day delay has to be properly explained. The respondent/complainant had not given any explanation for the delay. He further submits that in this case statutory notice dated 08.04.2019 was issued and the same was received by the petitioner on 11.04.2019, hence within 15 days thereof the respondent ought to have given a reply i.e., on or before 23.04.2019 and from 30 days thereof, the respondent ought to have filed a complaint. In this case, the complaint has been filed with a delay of 9 days, but the petition seeking condonation of delay has been filed to condone the delay of 6 days. The Trial Court has not properly appreciated the above facts and condoned the delay and directed the respondent to pay a cost of Rs.200/- to the petitioner. Hence, the petitioner/proposed accused challenging the same has filed this petition before this Court.



3. Learned counsel for the respondent/complainant submitted that the petitioner in a distinguishable manner approached the respondent saying that he is likely to settle the cheque amount and resolve the issue between them. By giving this one reason, the respondent has dragged on the issue and finally for this reason, a delay has been caused in filing the complaint. The petitioner's father had earlier lodged a complaint against the respondent for a dispute in the finance business in the Arcot Town Police Station and CSR.No.2094 of 2019 has been assigned. The complaint lodged by the petitioner's father is that in the finance business there was some dispute and in view of the above complaint, the respondent was called for enquiry and on several occasions he had appeared before the respondent police. He further submits that the petitioner and the respondent are residing in one area and they know for quite sometime. Taking advantage of the relationship, the petitioner had deceived the respondent. Therefore, the respondent has filed a complaint under 138(3) of the Act with a delay. Though in the affidavit, it was mentioned as 6 days delay, the Trial Court had considered the delay of 9 days and thereafter, only the delay was condoned and an order was passed. Further, the learned counsel referring to Section 142(b) of the Negotiable Instruments Act, 1881, wherein, a provision was brought by



way of amendment on 06.02.2003, where a power has been granted to the Trial Court to condone the delay and taking cognizance of the complaint if the complainant satisfies the Court that there was sufficient cause for not making the complaint within the stipulated period.

4. In this case, as pointed out earlier, it was only due to the police complaint and subsequent development and also the relationship between the petitioner and the respondent, the delay occurred and the Trial Court had considered all these aspects and thereafter, condoned the delay. He further submits that by filing the above petition, the petitioner had successfully stalled the trial of proceedings in Section 138 of the Negotiable Instruments Act case for nearly about five years. Hence, he submitted that this petition can be dismissed with costs and with a direction to the Trial Court to complete the trial within a stipulated period.

5. Considering the facts and circumstances of this case and on perusal of the materials available on record, it is seen that though it has been stipulated under Section 142(b) that the complaint has to be filed within a period of one month from the date of cause of action arise, the



proviso to Section 142(b) provides that if the complainant satisfies the Court that there was sufficient cause for not making the complaint within such period, the delay can be condoned. In this case, the delay is only 9 days, which can be rightly considered and condoned by the Trial Court and the Trial Court had given proper and detail reasoning.

6. In view of the same, the order passed by the Trial Court in CMP.No. 2087 of 2019 on 05.12.2020 is proper and it need not be interfered with.

7. In view of the same, this criminal revision petition is dismissed. No costs. Connected miscellaneous petition is closed. The Trial Court is directed to issue notice to the petitioner as well as the respondent and ensure that the trial in the above case shall be completed within a period of three (3) months from the date of receipt of a copy of this order.

8. After taking the complaint on file, if any dilatory tactics is adopted, coercive step shall taken against the concerned person. This Court places its appreciation for the thorough and meticulous preparation and



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**M.NIRMAL KUMAR, J.**  
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submissions made before this Court, for the respondent by the legal aid  
counsel nominated for the respondent.

**20.06.2023**

Index: Yes/No  
mp

To

1. The District Munsif-cum-Judicial Magistrate,  
Arcot, Vellore District.

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