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Crl.OP.Nos.5412, 5413, 5416, 5417, 5419 & 5420 of 2022

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**DATED : 11.07.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

**Crl.O.P.Nos.5412, 5413, 5416, 5417, 5419 & 5420 of 2022**

**and**

**Crl.M.P.Nos.2945, 2946, 2949, 2950, 2951 & 2952 of 2022**

Deborshi Sadhan Bose (Billy),  
Director,  
M/s.E.C.Bose & Co. Pvt. Ltd.,  
E.C.Bose Group of Companies,  
No.13A, St.George Terrace,  
P.S.Hastings, Kolkatta - 700 022.

... Petitioner

Vs.

1.M/s.Sugesan Transport Pvt. Ltd.,  
represented by its Managing Director,  
Mr.Rajendra K.Sheth  
No.7C, Second Canal Road, Gandhi Nagar,  
Adyar, Chennai - 600 020.

2.M/s.E.C.Bose and Company Prviate Limited,  
'ECB Towers', No.13A, St.George Terrace,  
P.S.Hastings, Kolkatta - 700 022.

... Respondents

**Prayer:** Criminal Original Petitions filed under Section 482 Cr.P.C.,  
praying to call for the records in Crl.R.C.Nos.10, 11, 12, 13, 14 & 15 of  
2020 on the file of Principal Sessions Judge, Chennai, dated 02.06.2021  
confirming the orders dated 30.04.2019 in (i) Crl.M.P.No.92(M) in  
C.C.No.59 of 2017 (ii)Crl.M.P.No.93(M) in C.C.No.60 of 2017 (iii)  
Crl.M.P.No.94(M) in C.C.No.61 of 2017 (iv)Crl.M.P.No.95 (M) in



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C.C.No.62 of 2017 (v) Crl.M.P.No.96(M) in C.C.No.63 of 2017 and (vi) Crl.M.P.No.97(M) in C.C.No.64 of 2017 on the file of Judicial Magistrate, FTC III, Saidapet.

For Petitioner : Mr.J.Ravikumar  
[in all Crl.O.Ps.]  
For Respondents : Mr.Nithyaesh Natraj [R1]  
[in all Crl.O.Ps.]

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### **COMMON ORDER**

These Criminal Original Petitions have been filed before this Court aggrieved by the orders passed by the Court below allowing applications filed by the first respondent in each complaint, to condone the delay in filing the complaints, after the complaints have been taken cognizance by the Court below.

2. The issue as to whether an application to condone the delay in preferring a complaint can be entertained by learned Magistrate after taking cognizance of the offence u/s.138 of the Negotiable Instruments Act was placed before a Division Bench of this Court and the Division Bench by order dated 02.12.2022, held as follows:

"23. In conclusion, we hold and declare:

- a that an application for condonation of delay under the proviso to Section 142(1)(b) of the NI Act cannot be entertained by



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the Magistrate after taking cognizance of the offence under Section 138 of the Act;

- b consequently, the Magistrate does not have the power to condone the delay under the proviso to Section 142(1)(b) of the NI Act at the post-cognizance stage. The decision in **Sri Vasudharini Enterprises**, *supra*, to the extent that it purports to quash the complaint in its entirety on the ground of limitation, and the decision in **G.Venkatesan**, *supra*, condoning delay at the post-cognizance stage, will stand overruled.
- c where the Magistrate discovers, at the post-cognizance stage, that cognizance has been taken without a formal order condoning the delay, the parties may take recourse to the remedies set out in paragraph 19, *supra*. Alternatively, the Magistrate may bring the matter to the notice of the Sessions Judge who may, thereafter, exercise power *suo motu* under Section 399 Cr.P.C. to set right the irregularity, as observed in paragraph 20, *supra*."

3. Pursuant to the above order, all these petitions have been posted for hearing today.

4. Heard Mr.J.Ravikumar, learned counsel for petitioner and Mr.Nithyaesh Natraj, learned counsel for first respondent.

5. There is no dispute with regard to the fact that the learned Magistrate had entertained the applications for condonation of delay in filing the complaints after taking cognizance of the complaints. The



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Division Bench has made it clear that such an application cannot be entertained post-cognizance. The Division Bench has also made it clear that if the Magistrate discovers at the post-cognizance stage that cognizance has been taken without a formal order of condonation of delay, the parties will have to take recourse to the remedy that has been set out in paragraph Nos.19 and 20 of the order. By virtue of this order, the very taking of cognizance without condoning the delay in filing the complaint, makes the entire proceedings non-est in the eye of law. Hence, right from the stage of taking cognizance and all those proceedings which took place subsequently, will have to go and the case will go back to the stage of condonation of delay in filing the complaint.

6. In view of the above, the first respondent/complainant in each complaint shall file petitions to condone the delay in filing the complaints before the Court below. The delay shall be calculated by taking into account the date on which the complaint was filed before the Court below. Such petitions shall be filed by the first respondent/complainant within a period of two (2) weeks from today. On such filing, the Court below shall issue notice to the accused persons and



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give them opportunity to file their objections and the condonation of delay petitions shall be decided on its own merits. If ultimately the condone delay petitions are allowed, thereafter, the process of taking cognizance of the complaint will arise. The Court below shall pass orders in the condone delay petitions within a period of eight (8) weeks from the date on which the condone delay petitions are filed by the complainant.

All these criminal original petitions are disposed of with the above directions. Consequently, connected miscellaneous petitions are closed.

**11.07.2023**

Speaking Order/Non-speaking Order

Index :Yes/No

Neutral citation: Yes/No

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To

1.The Principal Sessions Judge,  
Chennai.

2.The Judicial Magistrate,  
FTC III, Saidapet.

3.The Public Prosecutor,  
Madras High Court, Chennai.



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**N.ANAND VENKATESH, J.**

gm

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**11.07.2023**