



Crl.R.C.No.359 of 2020

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.04.2023

CORAM :

THE HONOURABLE Dr. JUSTICE **G.JAYACHANDRAN**

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M/s.Saran Shipping Line
Rajagopalan (Partner),
R8, 2nd Floor,
Barathi Sarasuram Enclave,
Kumaranandhapuram 7th Street,
Tirupur – 641 608.

.... Petitioner

Vs

Anitha @ Anitha Moses
Proprietor,
M/s.A.S.Fashion,
18, AVP Layout, 5th Street,
Padmavathy Puram,
Gandhi Nagar, Tirupur – 641 603
(within the police limit of
Tirupur North Police Station)

.... Respondent

PRAYER : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to call for the records of the order passed in Crl.M.P.No.3411 of 2019 dated 04.12.2019 on the file of the Judicial Magistrate No.I, Tiruppur and set aside the same and direct



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the Judicial Magistrate No.I, Tiruppur to take on file the unnumbered C.C.No... of 2019 filed by the petitioner to be decided on merits.

For Petitioner : Mr.V.M.Venkataramana

For Respondent : No appearance

ORDER

This Revision Petition is filed by the complainant being aggrieved by the dismissal order of the Judicial Magistrate in condoning the delay of 27 days in preferring the complaint.

2. No representation for the respondent inspite of service and entering appearance by the counsel by name called Mr.K.S.Kaviarasu and Mr.K.Vignesh Karthick.

3. The facts of the case is that a cheque dated 10.12.2018 for a sum of Rs.3,34,684/- was issued by the accused/Anitha @ Anitha Moses to discharge the liability arose in the course of yarn business between the complainant and the accused. The said cheque, on



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presentation was bounced back with memo dated 28.12.2018 stating that "funds insufficient". The complainant has caused statutory notice intimating about the dishonour of the cheque. Thereafter, the complainant caused statutory notice on 26.01.2019. The notice caused was not claimed by the accused and the same was returned on 29.01.2019. However, the complainant has not preferred any complaint immediately after the cause of action arose and within the limitation prescribed. He has presented the complaint only on 20.06.2019 along with the application to condone the delay of 27 days. In the application, the complainant has stated that before causing the statutory notice dated 26.01.2019, the accused made a request vide letter dated 05.01.2019 requesting not to present the cheque and he will pay the money to sustain the business relationship and believing the words of the accused, complaint was not filed, expecting the accused to pay the cheque amount. After realising that he is not ready to pay the amount, complaint has been lodged with a delay. The delay being a reasonable one and sufficiently explained and the same has to be condoned. However, the Trial Court



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dismissed the petition to condone the delay by observing that "waiting payment from the accused at the request of the accused without approaching the Court in time by not abiding the statutory command employed under Section 138 of Negotiable Instruments Act is not the ground to dismiss the condone delay petition".

4. The learned counsel appearing for the petitioner/complainant submitted that in the condone delay petition sufficient cause has been stated and the request made by the accused through her letter dated 05.01.2019, made the complainant to wait till the expiry of the limitation period.

5. The bonofide belief of the complainant that the accused will settle the dues without resorting to the legal remedy, cannot be taken advantage by the accused. This Court finds force in the said submission.



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6. Hence, this Revision Petition is allowed. The Trial Court is directed to allow the petition to condone the delay of 27 days in preferring the complaint in exercise of its power under Proviso of Section 142(1)(b) of Cr.P.C. The Trial Court shall take the complaint on file, cause notice to the accused and proceed in accordance with law.

19.04.2023

Internet : Yes/No

Index: Yes/No

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To
The Additional Principal Family Judge,
Coimbatore.



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Dr.G.JAYACHANDRAN, J.

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