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Crl.R.C.No.1091 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.04.2023

CORAM

THE HONOURABLE DR. JUSTICE **G.JAYACHANDRAN**

Crl.R.C.No.1091 of 2020

Hari

... Petitioner

Vs.

M.O.Surendar

... Respondent

PRAYER: Criminal Revision case has been filed under Section 397 and 401 of Cr.P.C., to set aside the order passed in CMP.No.3472 of 2017 dated 14.08.2019 on the file of the Judicial Magistrate No.2, Coimbatore.

For Petitioner : Mr.M.Marudhachalam

For Respondent : No appearance

ORDER

This criminal revision is filed challenging the order of the trial court which has dismissed the petition to condone 224 days delay in filing the complaint under Section 138 of NI Act.



Crl.R.C.No.1091 of 2020

WEB COPY

2. The petitioner herein had filed complaint under Section 138 of NI Act in connection with the cheque dated 21.03.2016 for a sum of Rs.4,00,000/- alleged to have been given by the respondent. The cheque which was presented on 23.03.2016 returned with endorsement 'insufficient fund'. Thereafter, on the request of the respondent, cheque was again re-presented on 05.05.2016. Second time the cheque bounced and thereafter, the petitioner caused notice on 13.05.2016 calling upon the respondent informing about the dishonour of the cheque. Thereafter, he has not filed the complaint within the time prescribed under the statute, but presented with condone delay petition stating that he was bedridden and therefore, not able to file the complaint within time and delay of 224 days caused due to his illness to be condoned.

3. The learned Trial Court considering the averment made in the condone delay petition that the petitioner was ill since January 2016 till he recovered and filed the complaint, contrarily in the complaint, has stated that the cheque was presented in the month of March 2016 and thereafter, represented in the month of May 2016 which was inconsistent to each other and therefore, dismissed the condone the delay petition.



Crl.R.C.No.1091 of 2020

WEB COPY

4. The learned counsel appearing for the petitioner submitted that the reason given by the trial court is incorrect. In the petition to condone the delay of 224 days, the petitioner has stated he fell ill during the first week of June 2016 and not January 2016. Therefore, for erroneous appreciation of evidence and reasoning, the order of the trial court is liable to be set aside and delay of 224 days has to be condoned.

5. The learned counsel appearing for the petitioner also referred the copy of the affidavit filed before the trial court for condone the delay, wherein in hand, it has been returned in paragraph 2 that the petitioner was ill and bedridden due to viral fever on first week of June 2016. In fact, this Court on perusing the affidavit accompanying along with the petition to condone the delay and the counter filed by the respondent before the trial court, find that the petitioner had stated that he fell ill due to viral fever on the first week of June 2016 and not January 2016 as observed by the trial court. However, not for that reason, condone delay petition to be dismissed, but for not producing the medical records to prove his illness. A long illness from June 2016 to February 2017



Crl.R.C.No.1091 of 2020

WEB COPY

requires a possible explanation with supportive document. In a case of criminal complaint under Section 138 of NI Act which requires time bound action, delay can be condoned only if sufficient cause is made out. In this case, bare averment without supportive document / medical records, that the complainant fell ill during the month of June 2016 and recovered only in February 2017 due to viral fever, cannot be a sufficient cause to condone the delay of 224 days in preferring the complaint which prescribes limitation of 30 days from the date of cause of action.

6. Hence, this criminal revision is dismissed. No costs.

24.04.2023

Index: Yes/No

Internet: Yes/No

Speaking/Non-Speaking order

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Crl.R.C.No.1091 of 2020

To
Judicial Magistrate No.2,
Coimbatore.



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Crl.R.C.No.1091 of 2020

Dr.G.JAYACHANDRAN, J

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Crl.R.C.No.1091 of 2020

24.04.2023