



Crl.R.C. No.1337 of 2023

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2023

CORAM

THE HONOURABLE MRS. JUSTICE **R.HEMALATHA**

Crl.R.C.No. 1337 of 2023 &

Crl.M.P.No.11028 of 2023

1. AMY International
Rep. by its proprietor,
Mr.A. Mohammed Yassin
Having office at,
No.T/B-99, Anna Fruit Market,
Koyambedue, Chennai 600 092.

2. A. Mohammed Yassin
Proprietor
AMY International,
No.Ap.807, G Block, 1st Street
Anna Nagar, Chennai 600 040.

...Petitioners

Vs.

M/s. BMW Global Ventures Pvt. Ltd.
Rep. by its Executive Director
Mr.P.B. Mohindeen Abdul Khader,
Having office at
Plot No.11, 2nd Lane, Officers Co0lony,
Varadarajapuram, Velacherry,
Chennai 600 042.

...Respondent



Crl.R.C. No.1337 of 2023

WEB COPY

Prayer : Criminal Revision Case filed under Section 397(1) r/w 401 Cr.P.C. against the order dated 12.01.2023 in Crl.M.P. No.91 of 2022 in CC S.R. No.858 of 2022, on the file of the Metropolitan Magistrate, Fast Track Court-I, Egmore, Allikulam, Chennai.

For Petitioners : Mr. L. Santhosh Kumar
For Respondents : Mr.M. Madhan Raj

ORDER

Challenge in this Criminal Revision is made to the orders dated 12.01.2023 in Crl.M.P. No.91 of 2022 in CC. S.R. No.858 of 2022, passed by the learned Metropolitan Magistrate, Fast Track Court-I, Egmore, Allikulam, Chennai.

2. The facts leading to the filing of the present Criminal Revision are as follows:

2.1. The respondent/complainant filed a private complaint before the Metropolitan Magistrate, Fast Track Court-I, Egmore, Allikulam, Chennai, under Section 200 Cr.P.C against the revision



CrI.R.C. No.1337 of 2023

WEB COPY

petitioners for an offence punishable under Section 138 of the Negotiable Instruments Act (NI Act) along with a petition under Section 5 of the Limitation Act seeking to condone the delay of 103 days. In the affidavit filed in support of the said petition, the respondent/complainant had stated that he could not concentrate on anything due to sudden slow down in his business for want of funds and he was also continuously out of country to improve his business.

2.2. The present petitioner/accused filed a detailed counter and the learned Metropolitan Magistrate, Fast Track Court-I, Egmore, Allikulam, Chennai, after considering the rival submissions made by both the parties, allowed the petition vide orders dated 12.01.2023, challenging which, the present revision petition is filed.

3. Mr. L. Santhosh Kumar, learned counsel for the revision petitioners contended that as per Section 5 of the Limitation Act, each and every day's delay should be explained and that in the instant case the respondent/complainant did not adduce any oral/documentary evidence



Crl.R.C. No.1337 of 2023

WEB COPY

to show that he was out of India. He also relied on the decision of a Single Judge of this Court in ***A.M.S.Ameenullah vs. S.Devarajan*** in Crl.R.C.No.994/2010 dated 22.12.2016 and contended that when the averments contained in the affidavit are very vague, it cannot be stated that the respondent/complainant had sufficient cause for condoning the delay in presenting the private complaint under Section 200 Cr.P.C. He therefore, prayed for allowing the present Criminal Revision.

4. Per contra, Mr.M. Madhan Raj, learned counsel for the respondent/complainant contended that the complainant has shown sufficient cause for condoning the delay of 103 days and that the trial court by exercising its judicial discretion had allowed the petition and the case is now posted for questioning the revision petitioners/accused under Section 313 Cr.P.C. He also relied on the decisions of this Court in ***M/s. Sri Shanthi Guru Marbles vs. M/s. Vigneshwara Minierals*** (Crl.OP. No.1573 of 2019) and in ***Munirathinammal vs. T.E. Aruna*** Crl. R.C. No.566 of 2017) and contended that there cannot be any hard and fast rule for filing the petition for condonation of delay. His further



Crl.R.C. No.1337 of 2023

WEB COPY

contention is that the expression "sufficient cause" in Section 5 of the Limitation Act as well as in Section 142(b) of the Negotiable Instruments Act is elastic enough to enable the courts to apply the law in a purposeful manner to meet the ends of justice. According to him the courts should adopt liberal approach while considering the petition for condoning the delay so that the substantive rights of the parties are not defeated because of the delay.

5. A perusal of the order passed by the trial court shows that the learned trial court judge had infact relied on the decision of the Hon'ble Supreme Court in *N. Balakrishnan vs. M.Krishnamurthy* reported in **1998 (7) SCC 123**, wherein it has been held thus:

"It must be remembered that in every case of delay there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy the court must show utmost consideration to the suitor. But



Crl.R.C. No.1337 of 2023

WEB COPY

when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time then the court should lean against acceptance of the explanation. While condoning delay the Court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite a large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant the court shall compensate the opposite party for his loss."

6. In the instant case, the respondent/complainant had specifically contended that he could not concentrate on his business due to sudden loss in his business and he was also continuously out of India. There is a delay of 103 days in preferring the complaint under Section 200 Cr.P.C. and the offence alleged against the present revision petitioners is under Section 138 of NI Act. It is pertinent to point out that the present revision petitioners/accused did not deny their signature on the cheque and according to the counsel for the respondent/complainant the accused had only questioned the quantum of the amount to be paid by



Crl.R.C. No.1337 of 2023

WEB COPY

them to the respondent/complainant. The evidence of the complainant is completed and now the case stands posted for questioning the accused under Section 313 Cr.P.C. It should be remembered that there can be some lapses on the part of the litigant and this alone cannot be a ground to reject the plea in toto. The reasons assigned by the respondent/complainant are acceptable and there is nothing on record to show that there was malafide intention on the part of the respondent/complainant in preferring the complaint with a delay of 103 days. In the circumstances, I do not see any reason to interfere with the orders passed by the trial court Judge.

7. In the result,

- i. the Criminal Revision is dismissed. Consequently connected Criminal Miscellaneous Petition is closed.
- ii. The orders dated 12.01.2023 in Crl.M.P. No.91 of 2022 in CC S.R. No.858 of 2022, passed by the learned Metropolitan Magistrate, Fast Track Court-I, Egmore, Allikulam, Chennai, is confirmed.



Ctrl.R.C. No.1337 of 2023

WEB COPY

iii. The learned Metropolitan Magistrate, Fast Track Court-I, Egmore, Allikulam, Chennai, is directed to dispose of the case as expeditiously as possible.

30.08.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
bga

To

1. The Metropolitan Magistrate, Fast Track Court-I,
Egmore, Allikulam, Chennai.c
2. M/s. BMW Global Ventures Pvt. Ltd.
Rep. by its Executive Director
Mr.P.B. Mohindeen Abdul Khader,
Having office at
Plot No.11, 2nd Lane, Officers Colony,
Varadarajapuram, Velacherry,
Chennai 600 042.



WEB COPY



Crl.R.C. No.1337 of 2023

R. HEMALATHA, J.
bga

Crl.R.C.No. 1337 of 2023 &
Crl.M.P.No.11028 of 2023

30.08.2023