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Crl.RC.No.1317 of 2019



IN THE HIGH COURT OF JUDICATURE OF MADRAS

RESERVED ON : 07.09.2023

PRONOUNCED ON : 20.12.2023

CORAM:

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Crl.RC.No.1317 of 2019

and

Crl.MP.No.17795 of 2019

Gururaj

... Petitioner

vs.

Sheela Boran

... Respondent

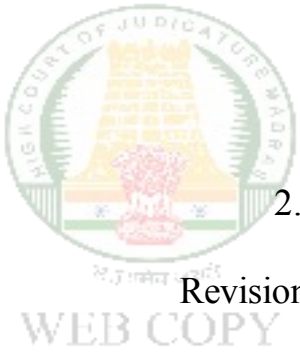
Prayer:- Criminal Revision Case filed under Sections 397 & 401 of Cr.P.C, to set aside the order passed by the learned Judicial Magistrate, Udhagamandalam in C.M.P.No.6468 of 2018 in C.C.No.242 of 2005. dated 01.11.2019.

For Petitioner : Mr.T.Shanmugam

For Respondent : Mr.R.Palanisamy

ORDER

This Criminal Revision Case had been filed seeking to set aside the order passed by the learned Judicial Magistrate, Udhagamandalam in C.M.P.No.6468 of 2018 in C.C.No.242 of 2005, dated 01.11.2019.



2. The brief facts which are necessary to decide this Criminal Revision Case are as follows:

2.1.The Revision Petitioner is the Complainant before the learned Judicial Magistrate, Udhagamandalam. He had filed C.C.No.242 of 2005, a private complaint under Section 138 of Negotiable Instruments Act. As per the contents of the complaint, the Accused/Respondent in this Criminal Revision Case is alleged to have borrowed a sum of Rs.6,00,000/- (Rupees Six Lakhs only) from the Complainant (Revision Petitioner herein) on 24.12.2004 as a hand loan. Towards discharge of the loan, the Accused had issued a cheque bearing No.883543 dated 05.04.2005 drawn on UCO Bank, Udhagamandalam for a sum of Rs.6,00,000/- (Rupees Six Lakhs only). The cheque was presented by the Complainant before the Indian Overseas Bank, Udhagamandalam Branch on 19.04.2005. The same was dishonoured with a memo stating “payment stopped by drawer” on the same day. The Complainant issued Lawyer's notice on 23.04.2005 as contemplated under Section 138 (b) of the Negotiable Instruments Act. The same was received by the Accused on 27.04.2005. The acknowledgment card for the same was signed by the husband of the Accused. The Accused also signed on the same. In spite of the demand by the Complainant in the Lawyer's notice for payment of money towards the dues, the Accused failed to make payment



within the period of 15 days from the date of receipt of notice. Therefore, the Accused had committed offence attracting Section 138 of the Negotiable Instruments Act read with Section 142 of the Banking Public Financeal Institutions and Negotiable Instruments (Amendments) Act, 66 of 1988. The learned Judicial Magistrate, Udhagamandalam, after recording the sworn statement of the Complainant and on perusing the complaint and documents, taken the complaint on file as C.C.No.242 of 2005 and issued summons to the Accused. The Accused appeared before the learned Judicial Magistrate, Udhagamandalam. She was furnished with copies and questioned regarding the offence. Since she denied the offence, the learned Judicial Magistrate ordered trial. During trial, the Complainant himself examined as P.W-1. The Complainant had marked documents viz., the cheque, intimation slip from the Indian Overseas Bank, cheque returned memo issued by the Bank wherein the Accused maintains her account, the Advocate notice issued on behalf of the Complainant and the acknowledgment card received from the Accused as Exs.P-1 to P-5. The Accused was examined under 313 of Cr.P.C. regarding the incriminating materials against her. She denied the incriminating evidence against her. Even though the case was filed in the year 2005, it was protracted by the Accused for cross-examining the Complainant as P.W-1. At the stage of the



cross-examination, the Accused raised the plea of limitation stating that the complaint was filed beyond five days as per the statutory period. Therefore, the complaint is not maintainable. When P.W-1 was in the witness box at part-heard stage, the Complainant as P.W-1 had filed petition to condone the delay of five days in preferring the complaint by filing C.M.P. No.6468 of 2018. At that time, the Accused filed counter objecting to the same as the complaint was filed in the year 2005. On the date of filing of the complaint, the complaint was beyond the period of limitation. Therefore, the complaint was not filed within stipulated time. Therefore, the complaint is to be rejected, as not maintainable. Whereas the Complainant had filed petition to condone the delay of five days in preferring the complaint in the year 2018. Therefore, the Accused objected to the same stating that the petition for condoning the delay ought to have been filed to condone the delay of 13 years. After due enquiry, the learned Judicial Magistrate, Udhagamandalam by order dated 01.11.2019 in C.M.P.No.6468 of 2018 dismissed the petition to condone the delay of five days. Aggrieved by the same, the Complainant before the learned Judicial Magistrate, Udhagamandalam in C.C.No.242 of 2005 is before this Court by filing this Criminal Revision Case seeking to set aside the order of the learned Judicial Magistrate, Udhagamandalam.

3.The learned Counsel for the Complainant/Revision Petitioner



submitted that the order passed by the learned Judicial Magistrate, Udhagamandalam in C.M.P.No.6468 of 2018 is perverse. At the stage of cross-examination of the Complainant as P.W-1, the Accused had raised the plea of limitation. At the time of appearance of the Accused when copies were furnished before the trial commences if the Accused had raised such plea, it is justified. After protracting the case for 13 years by the Accused from the year 2005 till 2018, the Accused cannot be permitted to raise the plea of limitation. Particularly, five days delay in preferring the complaint after 13 years when the case is part-heard. The learned Judicial Magistrate failed to appreciate the evidence before the trial Court and failed to weigh the balance of convenience. The Accused who had protracted the case for 13 years was allowed the advantage of her own wrong doing to seek dismissal of the complaint on the technicalities of law. Whereas there is evidence that the Accused borrowed money and issued cheque. She had denied the signature in the cheque. She had not denied the issuance of the cheque. She had not issued reply notice inspite of the fact that he received statutory notice. All those facts were available during the evidence of P.W-1. The evidence of the Complainant as P.W-1. This was lost sight by the learned Judicial Magistrate, Udhagamandalam and dismissed the complaint after 13 years which is perverse. The loss of Rs.6,00,000/- (Rupees Six



Lakhs only) suffered by the Complainant cannot be compensated.

Therefore, the order passed by the learned Judicial Magistrate, Udthagamandalam in C.M.P.No.6468 of 2018 is to be set aside and this Criminal Revision is to be allowed, otherwise the Complainant would suffer injustice.

4. In support of his contention, the learned Counsel for the Revision Petitioner relied on the reported rulings in **2007 (4) CTC 524 [R.Kanthimathi and 2 others -vs- Bank of India, Dharmapuri Branch]** wherein it is observed that in a complaint for dishonour of cheque the delay in filing complaint is a curable defect. The non-filing of the condone delay petition and affidavit setting out reasons for delay was not sufficient to quash the proceedings under Section 138 of Negotiable Instruments Act. The relevant portion of the decision is extracted as under:

“Dishonour of Cheque — Complaint — Delay in filing Complaint — Non-filing of condone delay Petitions and affidavit setting out reason for delay — Not sufficient to quash proceedings u/s. 138 — Defect curable.

Code of Criminal Procedure, 1973 (2 of 1974), Section 482 — Petition to quash dishonour of cheque case for non-filing of condone delay Petition supported by affidavit along with Complaint — Held that Petition filed without accompanying affidavit setting out reasons for delay would not be sufficient to quash proceedings since it is curable defect — Complainant directed to file affidavit setting out reasons for delay and Trial Court thereafter directed to provide opportunity to accused to file counter — If Court satisfies that there are adequate and cogent



*reasons to condone delay, same can be decided on merits —
Complaints cannot be quashed.*

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(Para 18)

*Negotiable Instruments Act, 1881 (26 of 1881), Section 142
Proviso to — Dishonour of cheque case — Condone delay — Non-
filing of affidavit and Petition seeking condonation of delay along
with Complaint — Effect of — Procedure — Petition filed with an
accompanying affidavit would not be sufficient to quash
proceedings under Section 138 of N.I. Act — It is only curable
defect — Complainant directed to file affidavit setting out reasons
for delay in filing Complaint and Trial Court directed to provide
opportunity to accused to raise their defence — If Court satisfies
that there are adequate and cogent reasons to condone delay,
same can be decided on merits.”*

5. Also relied on the decision of this Court in **2016 (6) CTC 719**
[Venture Softech India Private Ltd., vs. Startup Xperts] wherein it is held
that the contention of the Accused that the complaint is barred by limitation
and non-mentioning of the date of receipt of notice, Complainant can file
petition seeking condonation of delay in instituting the complaint the same
cannot be quashed on the ground of limitation.

6. The learned Counsel for the Petitioner also relied on **2015 (1)**
MWN (Cr.) DCC 75 (Mad) [A.Rahamathullah @ Maoulana -vs-
P.A.K.Manohran wherein Negotiable Instruments Act – Section 138 –
Filing of complaint beyond the period of limitation. No petition filed by the
Complainant for condonation of delay offering explanation for such delay.



Magistrate inadvertently taking cognizance without noticing the delay -

Error committed by the lower Court – whether Complainant can be allowed to suffer – following principles laid down by the Apex Court, held, the Complainant must be afforded opportunity to go before the lower Court and file petition seeking condonation of delay by showing sufficient cause and setting aside the order taking cognizance, matter remitted to lower Court with liberty to the Complainant for showing sufficient cause and lower Court to consider the same and proceed in accordance with law.

7. In another decision of this Court reported in **2011 (1) MWN (Cr.)**

DCC. 28 (Mad) [S.K.A.P.Balakrishnan -vs-Jimmy this Court had observed as follows:

“NEGOTIABLE INSTRUMENTS ACT, 1881 (26 of 1881), Sections 142(b) & 138 — Condonation of delay in filing Complaint — Dismissal of Petition — Revision against — Whether order dismissing Petition for condoning delay is an Interlocutory order — Whether Revision barred by Section 397(2) — Order dismissing Delay Condonation Petition not an Interlocutory Order, but a final order — Revision against, therefore, maintainable — Delay of 86 days in filing Complaint under Section 138 — Complainant stated in his Affidavit that since Accused requested him not to file Complaint promising repayment in due course, he had not chosen to file Complaint in time — Reasons assigned by Complainant though feeble in nature, his remedy, which he may get at end of trial, shall not be denied — Therefore, to secure ends of justice, held, impugned order liable to be reversed — Delay condoned and Complaints directed to be taken on file.

(Paras 15-19 & 24)



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WORDS & PHRASES — “Interlocutory Order”, meaning of — Order which is made pending cause and before a final hearing on merits — Interlocutory order is made to secure some end and generally collateral to issues formed by pleadings and not connected with final judgment.”

8.By way of reply, the learned Counsel for the Respondent/Accused submitted that the order passed by the learned Judicial Magistrate, Udthagamandalam is a well reasoned order which does not warrant any interference by this Court. The plea of limitation can be raised at any stage of the proceedings. The Complainant ought to have been diligent in filing a complaint. When there is delay, it was pointed out by the Accused, instead of seeking to condone the delay of 13 years, the petition to condone the delay was filed seeking to condone the delay of five days alone after 13 years. This conduct of the Complainant seeking to condone the delay of five days in preferring the complaint after 13 years cannot be permitted. Therefore, the order passed by the learned Judicial Magistrate, Udthagamandalam dismissing C.M.P.No.6468 of 2018 by order dated 01.11.2019 is a well reasoned order which does not warrant any interference by this Court. Hence, this Criminal Revision Petition is to be dismissed as having no merits.

Point for consideration:



Whether the order dated 01.11.2019 passed by the learned Judicial Magistrate, Udthagamandalam in C.M.P.No.6468 of 2018 in C.C.No.242 of 2005 is to be set aside as perverse?

9. On perusal of the order passed by the learned Judicial Magistrate, Udthagamandalam in C.M.P.6468 of 2018 in C.C.No.242 of 2005, it is found that after recording the evidence of the Complainant, the witness has been cross examined. When the case was posted for argument, based on the contention of the learned counsel for the Accused, C.M.P.No.6468 of 2018 was filed by the Complainant/P.W-1 to condone the delay of 5 days in preferring the complaint.

10. On perusal of the records, the order passed by the learned Judicial Magistrate in C.M.P.No.6468 of 2018 in C.C.No.242 of 2005 is not found to be well reasoned order. At the same time, the complaint had been dismissed as it is hit by Section 5 of the Limitation Act,1963.

11. The learned Judicial Magistrate ought to have rejected the contention of the learned Counsel for the Accused, who raised the technical plea of limitation. If he had raised it before proceeding with the trial, the



Complainant would not have suffered miscarriage of justice.

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12. After the evidence had been recorded, an opportunity was afforded to the Accused to cross-examine the witnesses. The Complainant then filed a petition to condone the delay of 5 days in filing the complaint under the Negotiable Instruments Act in the year 2018, which had already lapsed 13 years before. Therefore, the Accused who had protracted the proceedings for 13 years, should not be allowed to take advantage of her wrong doing for which the Complainant should not be penalised.

13. In the light of the above reported rulings, in all those cases it is clearly stated that the Complainant in a case under 138 of Negotiable Instruments Act shall not suffer on the ground of technical plea of delay in filing the complaint. The facts of the case in the reported ruling in **2015 (1) MWN (Cr.) DCC 75** and the facts of this case is similar where the Magistrate had taken the complaint on file without considering the period of limitation by inadvertence. Subsequently, when it was pointed out the learned Magistrate had dismissed it. Therefore, Criminal Original Petition seeking to quash the order was allowed. The same principle applies to this case also. At the stage of cross-examination of P.W-1 after 313 questioning



of the Accused by the Court the delay of five days in preferring the complaint was raised by the Accused for which the Complainant had filed C.M.P.No.6468 of 2018 seeking to condone the five days delay. At that time, the Accused had protested by filing counter stating that the five days delay cannot be condoned as already 13 years have passed. The Accused had protracted the proceedings for 13 years and she cannot be permitted to raise 13 years delay in filing a complaint in the year 2018. Therefore, the learned Judicial Magistrate lost sight of the fact that allowing the Accused objection and dismissing the criminal complaint will result in miscarriage of justice losing sight of the fact that there are materials incriminating the Accused as evidence before the trial Court and on the basis of the technical plea the C.M.P.No. 6468 of 2018 was dismissed. It is found perverse in the light of the reported rulings.

14. The learned Judicial Magistrate, Udhagamandalam, had missed the evidence available before the Court regarding the defense of the Accused on the technical plea of limitation and had dismissed the complaint, thereby, acquitting the Accused. A petition had been filed at the first instance when the Accused would appear before the Court.



15. The petition filed by the Complainant to condone the delay of 5 days would have been justified since the petition had been filed in the year 2018 to condone the delay of 5 days prior to filing of the complaint. Therefore, the Accused had objected to the Complainant filing petition in the year 2018, thereby seeking to condone the delay of 5 days only whereas, the Accused had raised objections regarding limitation after protracting the case from 2005 till 2018. They had not filed a petition to condone the delay along with the complaint. Therefore, the contention of the Accused that the 13 years delay had to be excluded. This is found unacceptable and unreasonable. The learned Judicial Magistrate, having ignored the rights of the Complainant in the light of technical plea raised by the learned Counsel for the Accused, had missed the woods for the trees.

16. Instead of appreciating the evidence of the witness and convicting the Accused, the learned Judicial Magistrate, Uthagamandalam, dismissed the complaint due to its delay. The 5 day delay should have been condoned. After the Accused having protracted the trial for 13 years, the Accused cannot be permitted to raise the plea of limitation.

In the light of the above discussion, **this Criminal Revision Petition**



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is allowed.

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The order dated 01.11.2019 passed in C.M.P.No.6468 of 2018 in C.C.No.242 of 2005 by the learned Judicial Magistrate, Udhagamandalam, is set aside. The subject matter is remanded back to the learned Judicial Magistrate, Udhagamandalam to hear the arguments of the learned Counsel for the Complainant and the Accused. After hearing both parties and on appreciation of evidence, the learned Judicial Magistrate, Udhagamandalam, may pass appropriate orders on merits as per the law. The raising of the Limitation Act once again shall not be permitted. Consequently, connected Miscellaneous Petition is closed.

20.12.2023

shl/drl/srm

Index : Yes/No

Speaking/Non-speaking order

Neutral Citation : Yes/No



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Crl.RC.No.1317 of 2019

To

The Judicial Magistrate,
Udhagamandalam.



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Crl.RC.No.1317 of 2019

SATHI KUMAR SUKUMARA KURUP, J.,

shl/drl/srm

Order made Crl.RC.No.1317 of 2019
and Crl.MP.No.17795 of 2019

20.12.2023