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Crl.R.C.No.664 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.01.2023

PRONOUNCED ON: 13.02.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.664 of 2021

A.Rajasekar	...	Petitioner
	/vs/	
G.Anandhakrishnan	...	Respondent

PRAYER : Criminal Revision Case has been filed under Sections 397 & 401 of Criminal Procedure Code to call for the records pertaining to Cr.M.P.No.5163 of 2018 passed by the Fast Track Court, Magistrate Level No.II, Poonamallee, Tiruvallur District and set aside the order dated 12.12.2018 by allowing this revision petition

For Petitioner	...	Mr.K.Balasubramaniam
Respondent	...	No appearance (Notice served)



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ORDER

Challenging the impugned order dated 12.12.2018 passed in Cr.M.P.No.5163 of 2018 in STC.SR.No.7713 of 2017 by the Fast Track Court, Magistrate Level No.II, Poonamallee, Tiruvallur District, this criminal revision case has been filed.

2.The facts of the case is that the petitioner is the complainant and the respondent is the accused. The accused borrowed a sum of Rs.5,50,000/- from the complainant on 09.07.2015 to meet his urgent need of his business and the accused assured to return the money within one year. Since the accused has not returned the borrowed money, the complainant filed the police complaint against the accused. Thereafter, the accused gave three cheques bearing cheque No.000329 dated 16.12.2016 for a sum of Rs.2,50,000/- drawn on Karur Vysya Bank Limited, Poonamallee High Road, Chennai – 600 077, (2).bearing cheque No.000330 dated 18.12.2016 for a sum of Rs.2,50,000/- drawn on Karur Vysya Bank Limited, Poonamallee High Road, Chennai 600 077 and (3). bearing cheque No.000331 dated 20.12.2016 for a sum of Rs.2,50,000/-



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drawn on Karur Vysya bank Limited, Poonamallee High Road, Chennai – 600 077. The complainant presented the cheques for collection through his bank viz., Union Bank of India, Avadi Branch, Chennai – 600 054 on 20.12.2016. All the cheques were returned for the reason “Funds insufficient”. Then, he issued statutory notice to the accused on 04.01.2017 and after receiving that notice, on 11.01.2017 requesting him to redeposit the abovesaid three cheques. On the request of the accused, the complainant represented the cheques for collection again on 18.03.2018, again three cheques were returned for “insufficient funds”. Since there was no response from the accused, he filed the complaint under Section 138 of the Negotiable Instrument Act with the petition for condoning the delay of 40 days. The condone delay petition in Crl.M.P.No.6303 of 2017 in UN S.T.C.No.7713 of 2017 was dismissed by the Court on 13.06.2018, against which, he filed a criminal revision Case in Crl.R.C.No.850 of 2018 before this Court and this Court by its order dated 24.10.2018 directed the complainant to file a fresh petition with proper averments and reasons for condoning the delay before the court below within two weeks from the date of receipt of a copy of the order. In pursuance of that direction, the



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complainant filed another petition for condoning the delay in CMP.No.5163/2018 in STC.SR.No.7713 of 2017, which was dismissed by the Fast Track Court, Magisterial Level No.II, Poonamallee, on 12.12.2018, which is under challenge.

3.The learned counsel for the petitioner contended that the trial Court, without considering the reason stated by the petitioner in the condone delay petition in C.M.P.No.5163 of 2018 in STC SR.No.7713 of 2017, dismissed, which is injustice and an opportunity has to be given to the petitioner to proceed the case. The respondent failed to honour the cheques issued by him. Under such circumstances, the petitioner, on the request of the respondent, represented the cheques again. Therefore, there was a delay. The trial Court, without considering this aspect, mechanically dismissed the delay condonation petition. The delay is not an intentional one. Under such circumstances, he pleaded to set aside the impugned order and the delay may be condoned and an opportunity may be given to file the complaint and proceeded against the accused.



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4. Though notice was served to the respondent and his name was also mentioned in the cause list, no appearance for the respondent. Hence, upon hearing the argument of the learned counsel for the petitioner, this order is passed.

5. I have considered the matter in the light of the submission made by the learned counsel for the petitioner and perused the records.

6. On perusal of the records, the fact reveals that the petitioner gave a sum of Rs.5,50,000/- to the respondent on 09.07.2015. In order to repay that amount with interest, the respondent gave three cheques, namely, bearing cheque No.000329 dated 16.12.2016 for a sum of Rs.2,50,000/- drawn on Karur Vysya Bank Limited, Poonamallee High Road, Chennai – 600 077, (2). bearing cheque No.000330 dated 18.12.2016 for a sum of Rs.2,50,000/- drawn on Karur Vysya Bank Limited, Poonamallee High Road, Chennai 600 077 and (3). bearing cheque No.000331 dated 20.12.2016 for a sum of Rs.2,50,000/- drawn on Karur Vysya bank Limited, Poonamallee High Road, Chennai – 600 077. When the three



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cheques were presented for collection by the petitioner, which were returned due to insufficient funds in the account maintained by the respondent. Under such circumstances, the petitioner issued statutory notice. Thereafter, the cheque amount remained unpaid. Therefore, he filed the complaint with the delay of 40 days and the reason stated by the petitioner for condoning the delay was that there was a constant touch with the respondent and in order to avoid litigation, he waited for receiving the amount from the respondent and the delay was not intentional. Under such circumstances, the request of the counsel to give a chance to file the case for collecting the cheque amount is to be taken into consideration. Only during the trial alone, it can be decided whether the cheques have been issued by the accused for the amount borrowed by him from the petitioner. Perusing the cheques issued by the accused are returned for insufficient funds. Under these circumstances, the petitioner issued statutory notice, after receiving the statutory notice, the respondent remained unpaid the cheque amount. Under such circumstances, in order to avoid litigation, the petitioner requested the respondent to repay the amount and waited for his response, thereby causing the delay of 40 days in filing the criminal



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proceedings. Therefore, the reason stated by the petitioner is acceptable. In order to meet the ends of justice, a fair opportunity has to be given to the petitioner to take legal action for collecting the cheque amount, it is injustice to reject his claim at the initial stage. The trial Court failed to consider properly the reason stated by the petitioner and mechanically dismissed. The dismissal order is unfair.

7.In the result, the impugned order passed by the trial Court is hereby set aside and the reason stated by the petitioner for the delay of 40 days in filing the complaint is hereby condoned and the criminal revision case is allowed and the trial Court is hereby directed to take the complaint on cognizance and decide the matter on merits and in accordance with law within one year.

Index : Yes/No
Internet : Yes/No
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.02.2023

To

The Fast Track Court,
Magistrate Level No.II,
Poonamallee, Tiruvallur District.



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V.SIVAGNANAM ,J.

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Pre-delivery order made in
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