



Crl.O.P.(MD).No.15663 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 01.11.2023

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.O.P(MD).No.15663 of 2020

and

Cr.M.P.(MD).No.7671 of 2020

S.Ganesan

... Petitioner

Vs.

R.Kannan

... Respondent

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records relating to order dated 17.07.2019 passed by the learned Additional District and Sessions Judge, (Fast Track Court), Kumbakonam in Crl.R.P.No.25 of 2018, confirming the order passed by the learned Judicial Magistrate No-II, Kumbakonam in Cr.M.P.No.12825 of 2015 dated 26.06.2018 and set aside the same.

For Petitioner : Mr.B.Anandan

For Respondent : Mr.K.M.Karunakaran



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ORDER

This petition has been filed by the petitioner as against the order dated 17.07.2019 passed by the learned Additional District and Sessions Judge, (Fast Track Court), Kumbakonam in Crl.R.P.No.25 of 2018, confirming the order passed by the learned Judicial Magistrate No-II, Kumbakonam in Cr.M.P.No. 12825 of 2015 dated 26.06.2018 and set aside the same.

2. The petitioner is the accused in Crl.R.P.No.25 of 2018 on the file of the the learned Additional District and Sessions Judge, (Fast Track Court), Kumbakonam, and has filed this Criminal Original Petition.

3. The petitioner herein borrowed some amount on 27.02.2015 from the respondent, for which, the petitioner is said to have issued a cheque dated 27.03.2015. The respondent herein presented the cheque in his bank and the same was returned with endorsement of “insufficient fund”. Thereafter, the respondent issued the statutory notice to the petitioner. Upon receipt of the notice, the petitioner did not make payment and hence, he filed a complaint



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before the learned Judicial Magistrate No-II, Kumbakonam, with a delay of 13 days, along with the condone delay petition.

4. He filed a medical certificate disclosing that he suffered from viral fever. The above said reason was accepted by the learned trial Judge and hence, the learned trial judge condoned the delay and proceeded further. Challenging the same, the petitioner filed revision case before the learned Principal Sessions Judge in Crl.R.P.No.25 of 2018 and the same was dismissed by confirming the order passed by the learned trial judge. Aggrieved over the same, the petitioner/accused in Crl.R.P.No.25 of 2018 filed this Criminal Original Petition to set aside the concurrent finding rendered by both the Courts below.

5. The learned counsel for the petitioner submitted that both the courts below without giving any reason, condoned the delay filed by the petitioner. For which, he produced the judgment of this Court reported in **2012 4 MLJ (Crl) 758**. In the said case, this Court has held that the condone delay petition should have been allowed assigning reasons. Hence, he prays to allow this case.



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6. The learned counsel for the respondent submitted that the said judgment was not applicable to the present case, because, the respondent stated the reason and also produced the medical certificate and the same was considered by the learned trial Judge and confirmed by the revisional Court. Hence, this judgment is not applicable and the petitioner seeks for dismissal of this case,

7. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

7.1. Whether the Court below committed any error in condoning the delay of 13 days in filing the complaint under section 138 of Negotiable Instrument Act against the petitioner?

8. The said Cheque No. 859963 dated 27.03.2015 had been received by the respondent from the petitioner to discharge his debt amount. The same was dishonoured and statutory notice was issued and the said statutory notice was received by the petitioner on 16.05.2015. As per the statutory requirement, the complaint ought to have been filed on or before 30.06.2015. But, the respondents



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suffered from “*Enteril Viral Fever*” and hence, he has not filed the complaint within time. He filed the complaint with a delay of 13 days stating the above reason and also produced the medical certificate and also he examined himself as a witness and deposed about his health condition. The said explanation was accepted by the Learned Trial Judge and also the revisional Court. When both the Courts accepted the reason as bonafide, this Court has no jurisdiction to interfere with. The Hon’ble Supreme Court in ***N. Balakrishnan v. M. Krishnamurthy***, reported in ***(1998) 7 SCC 123***, has held as follows:

9.It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter; acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the



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superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10.The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11.Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal



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remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12.A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice vide vShakuntala Devi Jainv.Kuntal Kumari[AIR 1969 SC 575 : (1969) 1 SCR 1006] and



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State of W.B. v. Administrator, Howrah Municipality[(1972) 1 SCC 366 : AIR 1972 SC 749] .

13.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 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 the 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 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.

9.In view of the above principle laid down by the Hon'ble Supreme Court, this Court does not find any infirmity and perversity in the order of the Courts below in condoning the delay of 13 days in filing the complaint against the petitioner under section 138 of Negotiable Instrument Act.



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10. Accordingly, this criminal original petition stands dismissed and the order passed by both the Courts below are hereby confirmed. Consequently, connected miscellaneous petition is closed.

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NCC : Yes/No
Index : Yes/No
Internet: Yes/No

sbm

To

1. Judicial Magistrate No.II,
Kumabakonam.
2. The Additional District and Sessions Court(FTC),
Kumabakonam
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

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