



Crl.O.P(MD).No.13037 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 27.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.13037 of 2021

and

Crl.M.P.(MD)Nos.6697 and 6701 of 2021

S.Palanikumari

...Petitioner

Vs

C.Renuga Devi

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the entire records of the complaint in S.T.C.No.296 of 2018 and the proceedings on the file of the Judicial Magistrate No.V, Madurai against the petitioner and quash the same.

For Petitioners

: Mr.K.Sridhar

For Respondent

: Mr.S.Suresh

ORDER

This petition is filed to quash the complaint in S.T.C.No.296 of 2018, on the file of the learned Judicial Magistrate No.V, Madurai.

2.According to the petitioner, the respondent has filed cheque complaint as against the petitioner and the same is pending before the learned Judicial Magistrate No.V, Madurai in S.T.C.No.296 of 2018. At the time of taking cognizance, the petition was filed with delay of 184 days in filing the



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complaint. But without issuing notice to the petitioner, the said petition was allowed by order dated 01.06.2018. The learned Magistrate has passed an order without issuing notice to the petitioner and without any reasons, the learned Magistrate passed an order by directing the petitioner therein to pay a sum of Rs.400/- to DLSA, Madurai and thereafter, taken on file in S.T.C.No. 296 of 2018. Thereby, the order of the learned Magistrate is liable to be set aside.

3.No counter was filed on the side of the respondent.

4.The learned counsel appearing for the petitioner would contend that this petitioner has been arrayed as accused in the aforesaid cheque case in S.T.C.No.296 of 2018. The respondent filed a cheque case alleging that the respondent borrowed a sum of Rs.4,50,000/- and thereafter, he issued a cheque dated 30.08.2017 of State Bank of India. When the same was presented for collection, the same was returned as 'insufficient funds' on 31.08.2017 and issued notice on 08.09.2017 and thereafter, the same was replied by the accused on 21.09.2017. Therefore, the complainant filed complaint with condone delay petition and in that petition, no notice was served to the petitioner and no opportunity was given to him. Without notice, the said petition was allowed. In order to defend the case of the petitioner in



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the condone delay petition, no opportunity was given and thereby, the order passed by the learned Magistrate is liable to be set aside.

5.To support his contention, he relied on the following judgments:-

(i)K.R.Kannan v. Jeya in Crl.O.P.No.39807 of 2004 in Madras High Court

(ii)Sanja Raghuram and another v. Telengana Investments and another reported in 2006 133 Compcaas 450 Mad

6.The learned counsel appearing for the respondent would contend that he filed written arguments stating that the petitioner has borrowed a sum of Rs.4,50,000/- from the complainant and issued a cheque for the amount dated 24.08.2017. When the same was presented for collection, it was returned and hence, he filed a complaint with a delay of 184 days and the same was also allowed by the learned Judicial Magistrate and thereafter, this petitioner appeared before the trial Court in the year 2019 itself and furnished sureties and then after thought filed this petition and hence, revision petition only would lie as against the order passed by the trial Court. The petition under Section 482 of Cr.P.C., is not maintainable. Therefore, the petition is liable to be dismissed.



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7.To support his contention, he relied on the following judgments:-

(i)Birendra Prasad Sah v. State of Bihar and Another in Crl.A.No.868 of 2019

(ii)MSR Leathers v. S.Palaniappan and Another in Crl.A.Nos.261 – 264 of 2002

8.This Court heard both sides and perused the materials available on records.

9.On perusal of the records, it is admitted fact that the complainant has filed a complaint as against this petitioner with delay of 184 days. A separate petition has been filed to condone the delay. In that petition, notice was not served to the petitioner herein and without hearing the petitioner herein, the learned Magistrate has passed an order and condoned the delay by imposing cost of Rs.400/- and the same has to be deposited before the DLSA, Madurai.

10.The contention of the petitioner is that opportunity was not given to put forth his defence in the condone delay petition and thereby, taking cognizance by the learned Magistrate without giving opportunity in the condone delay petition is not permissible and it would affect the rights of the



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accused. Hence, the order passed by the learned Magistrate is liable to be set aside.

11.The learned counsel appearing for the petitioner relied upon the judgment of this Court in the case of ***K.R.Kannan v. Jeya in Crl.O.P.No. 39807 of 2004***, wherein this Court in para no.10 reads as follows:-

“In view of the above principle laid down by this Court in the decision cited supra, it is crystal clear that condoning the delay of preferring a complaint is not only a matter between the complainant and the Court, but it is a question of deciding the valuable right of the accused. In the event of condoning the delay, even without affording opportunity to the accused, the right of the accused is affected and infringed, inasmuch as the accused has been denied an opportunity to put forward his objection for condoning the delay. In the event of the accused raising his objection to show that the complainant has not shown any sufficient cause, the complaint is liable to be dismissed as not maintainable and the accused need not undergo the ordeal of trial. Therefore, this Court is constrained to direct the learned Judicial Magistrate No.1, Salem, to reconsider the condone delay petition by giving opportunity to both the complainant and the accused to put forward their respective contentions and to pass orders on merits by assigning valid reasons. It is also made clear that the above said defect of not assigning any valid reason or not affording any opportunity to the accused is only a curable



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irregularity or defect and as such, the complaint is not liable to be quashed at its threshold.”

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12.On careful reading of the aforesaid judgment, it is clear that the condoning the delay of preferring a complaint is not only a matter between the complainant and the Court, but it is a question of deciding the valuable right of the accused. In the event of condoning the delay, even without affording opportunity to the accused, the right of the accused is affected and infringed, inasmuch as the accused has been denied an opportunity to put forward his objection for condoning the delay. In the case on hand also, without giving opportunity to the petitioner, the learned Magistrate has decided the condone delay petition.

13.The learned counsel appearing for the respondent relied on the judgment of the Hon'ble Supreme Court in the case of ***Birendra Prasad Sah v. State of Bihar and Another in Crl.A.No.868 of 2019***, wherein the Hon'ble Supreme Court in para no.11 held as follows:-

“11 The complaint was instituted on 11 May 2016. Under Section 142(1), a complaint has to be instituted within one month of the date on which the cause of action has arisen under clause (c) of the proviso to Section 1386 . The proviso however stipulates that cognizance of the complaint may be taken by the court after the prescribed period, if the complainant satisfies the Court that he



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had sufficient cause for not making a complaint within such period.

Both in paragraphs 7 and 8 of the complaint, the appellant indicated adequate and sufficient reasons for not being able to institute the complaint within the stipulated period. These have been adverted to above. The CJM condoned the delay on the cause which was shown by the appellant for the period commencing from 6 April 2018. However, if paragraphs 7 and 8 of the complaint are read together, it is evident that the appellant had indicated sufficient cause for seeking condonation of the delay in the institution of the complaint. The High Court has merely adverted to the presumption that the first notice would be deemed to have been served if it was dispatched in the ordinary course. Even if that presumption applies, we are of the view that sufficient cause was shown by the appellant for condoning the delay in instituting the complaint taking the basis of the complaint as the issuance of the first legal notice dated 31 December 2015.”

14. On careful reading of the aforesaid judgment, it is clear that it will not be applicable to the present facts and circumstances of the case. In that case, there is no question of issues of notice to the accused at the time of condoning the delay would arise.

15. Therefore, as rightly contended by the learned counsel appearing for the petitioner without affording opportunity to the petitioner, it is not



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appropriate to take cognizance by the learned Magistrate. Therefore, the case law submitted by the petitioner is squarely applicable to the present facts of the case.

16.In view of the aforesaid judgment, this Court is of the opinion that it is appropriate to direct the learned Magistrate to reconsider the condone delay petition filed by giving opportunity to both the complainant and the accused to put forth their contentions and to pass orders by assigning valid reasons. It is also made clear that the aforesaid defect of not assigning any valid reason or not affording any opportunity to the accused is only a curable irregularity or defect and as such, the complaint is not liable to be quashed at its threshold.

17.With the aforesaid observation, this Criminal Original Petition is disposed of and the case is remitted back to trial Court for fresh consideration. When the matter was filed before this Court, the matter was pending before the learned Judicial Magistrate No.V and now the case is pending before the learned Judicial Magistrate No.II, Fast Track Court, Madurai. The trial Court is directed to decide the application within a period of one month from the date of receipt of copy of this order. Consequently, connected miscellaneous petitions are closed.



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NCC : Yes/No

Internet : Yes/No

Index : Yes/No

Mrn

To

1.The Judicial Magistrate No.II, Fast Track Court, Madurai.



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P.DHANABAL, J.

Mrn

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