



Crl.O.P.(MD)No.2295 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.02.2023

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.(MD).No.2295 of 2020

J.Alagesan

... Petitioner

Vs.

A.Sirinevasen

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the order passed by the learned Judicial Magistrate, Dindigul No.1 in Crl.M.P.No.103 of 2018 dated 13.09.2019 and set aside the same by allowing the above Criminal Original Petition.

For Petitioner : Mr.Sarvagan Prabhu

For Respondent : No Appearance

ORDER

The Criminal Original Petition is filed seeking to set aside the order passed by the learned Judicial Magistrate No.1, Dindigul in Crl.M.P.No.103 of 2018 dated 13.09.2019, wherein, the petitioner/complainant had prayed for



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condonation of seven days delay in filing the complaint under Section 138 of Negotiable Instruments Act.

2. The learned Magistrate had dismissed the said petition on the ground that the petitioner had not substantiated the reason for filing the complaint with a delay of seven days. The petitioner had stated that he had suffered from jaundice and therefore, he could not present it on time. The learned Magistrate also held that the petitioner had not re-presented the returned complaint within the time stipulated and there was a delay of 89 days in re-presentation.

3. The learned counsel for the petitioner produced the proof of service of notice on the respondent. Though notice was served on the respondent, none has entered appearance on behalf of the respondent.

4. This Court finds that there has been a delay of seven days in filing a complaint under Section 138 of Negotiable Instruments Act. This Court and the Hon'ble Supreme Court have repeatedly held that in case of this nature, the Courts have to be pragmatic in their approach and allow the parties to adjudicate their disputes on merits instead of rejecting the complaint on the ground of delay. This Court in similar circumstances in the case of



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Munirathinammal Vs. T.E.Aruna reported in **2022 (2) LW (Crl) 738** held as

follows:

"5.It is settled law that there cannot be any hard and fast rule for deciding an application for condonation of delay. The expression "sufficient cause" in Section 5 of the Limitation Act as well as in Section 142 (b) of Negotiable Instrument Act is elastic enough to enable the Courts to apply the law in a purposeful manner to meet the ends of justice. The Courts always held that a liberal approach should be adopted while considering the petition for condoning the delay so that substantive rights of the parties are not defeated merely because of the delay.

6.We are of the view that Courts have to be pragmatic in their approach while dealing with condone delay petitions, unless the delay is unduly long and it appears to the Court that the lis itself is either vexatious or frivolous."

5. This Court also finds that the delay is only seven days which can be condoned and hence inclined to set aside the order passed by the learned Judicial Magistrate No.1, Dindigul in Crl.M.P.No.103 of 2018 dated 13.09.2019. Consequently, the learned Judicial Magistrate No.1, Dindigul is directed to take the complaint on file and adjudicate it on merits.



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6. With the above observation, this Criminal Original Petition is allowed.

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06.02.2023

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

To

The Judicial Magistrate No.1,
Dindigul.



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SUNDER MOHAN, J.

Lm

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