



Crl.R.C.No.95 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.07.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.95 of 2022

V.Kalaivani

... Petitioner

Vs.

M.Menaka

... Respondent

PRAYER : Criminal Revision filed under Section 397 r/w 401 of Code of Criminal Procedure, to set aside the order dated 01.12.2021 made in Crl.M.P.No.21 of 2021 in an unnumbered criminal appeal of the year 2021 on the file of the Principal Sessions Judge, Namakkal.

For Petitioner : Mr.C.Munusamy

For Respondents : Mr.V.Elangovan

O R D E R

This criminal revision has been filed seeking to set aside the order dated 01.12.2021 passed by the learned Principal Sessions Judge,



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Namakkal, in Crl.M.P.No.21 of 2021 in an unnumbered criminal appeal.

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2. The learned counsel appearing for the petitioner submitted that the petitioner is an accused in S.T.C.No.149 of 2015 on the file of the Judicial Magistrate (Fast Track Court), Tiruchengode and the trial Court convicted the petitioner under Section 138 of Negotiable Instruments Act and sentenced her to undergo simple imprisonment for a period of six months and to pay a sum of Rs.5,000/- towards fine, in default, to undergo simple imprisonment for a further period of one month. Aggrieved by the conviction imposed against the petitioner, the petitioner preferred appeal with delay before the learned Principal District and Sessions Namakkal in Crl.M.P.No.21 of 2021 seeking to condone the delay of 1144 days in preferring the appeal and the said petition was dismissed on 01.12.2021 on the ground that the delay has not been explained properly. Challenging the same, the petitioner has filed this revision.

3. The learned counsel appearing for the petitioner further submitted that as per Section 142 (1) (b) of the Negotiable Instruments Act, the cognizance of the complaint may be taken by the Court after the



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prescribed period if the petitioner satisfies the Court that he had sufficient cause for not making a complaint within such period. Hence, the appellate Court have the power to condone the delay, however, without exercising the discretionary power conferred under Section 142 (1) (b) of the Negotiable Instruments Act, the appellate Court mechanically dismissed the condone delay petition, which is not sustainable.

4. The learned counsel appearing for the petitioner further submitted that that in order to show his *bona fide*, the petitioner is ready to deposit 50% of the cheque amount before the trial Court. Therefore, this Court may set aside the impugned order and remand the matter back to the appellate Court for fresh consideration.

5. The learned counsel appearing for the respondent submitted that he has no objection for setting aside the impugned order, if the petitioner deposits 50% of the cheque amount before the trial Court.



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6. Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the respondent.

7. The appellate Court have the power to condone the delay, however, without exercising the discretionary power conferred under Section 142 (1) (b) of the Negotiable Instruments Act, the appellate Court has mechanically dismissed the condone delay petition filed by the petitioner, which is not sustainable.

8. Considering the submission made by the learned counsel appearing for the petitioner that the petitioner, in order to show his *bona fide*, is ready to deposit 50% of the cheque amount before the trial Court since the appeal was filed with a delay of 1144 days in Crl.M.P.No.21 of 2021, this Court is inclined to set aside the impugned order dated 01.12.2021 passed in Crl.M.P.No.21 of 2021 in the unnumbered appeal by the learned Principal Sessions Judge, Namakkal, and accordingly, it is set aside on the following conditions:



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(i) The petitioner is directed to deposit 50% of the cheque amount within a period of two weeks from the date of receipt of this order and produce proof of such payment before the trial Court.

(ii) The petitioner is also directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand Only) as costs to the respondent / complainant and produce proof of such payment before the trial Court.

(iii) Upon production of such proofs by the petitioner, the appellate Court shall number the appeal filed by the petitioner as against the respondent and shall dispose of the said appeal on merits and in accordance with law within a period of three months from the date of filing of proofs by the petitioner, after providing sufficient opportunity to the petitioner and the respondent.

9. This revision is allowed on the above terms.

08.07.2024

NCC : Yes / No

Index : Yes / No

Speaking Order : Yes / No

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To

1. The Principal Sessions Judge,
Namakkal.
2. The Judicial Magistrate,
(Fast Track Court),
Tiruchengode.



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M.DHANDAPANI, J.

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