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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2024

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.M.P.No.6841 of 2024
in Crl.A.No.(Sr) 21223 of 2024

S.Senthilnathan

...Petitioner

Vs.

B.Subashini

...Respondent

PRAYER in Crl.MP.No.6841 of 2024: Criminal miscellaneous petition has been filed under Section 5 of Limitation Act, to condone the delay of 404 days in preferring the Criminal Appeal before this Court against the judgment dated 11.08.2022 in CC.No.5086 of 2016 on the file of the Metropolitan Magistrate, FTC-I, Egmore, Allikulam, Chennai.

PRAYER in Crl.A.SR.No.21223 of 2024: Criminal Appeal has been filed under Section 378(4) of Cr.P.C., to set aside the judgment dated 11.08.2022 in CC.No.5086 of 2016 on the file of the Metropolitan Magistrate, FTC-I, Egmore, Allikulam, Chennai.

For Petitioner : Mr.K.Arunprasad

For Respondent : Mr.Rajesh Vivekananthan



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ORDER

The petitioner/defacto complainant has filed this petition to condone the delay of 404 days in preferring the Criminal Appeal before this Court against the judgment dated 11.08.2022 in CC.No.5086 of 2016 on the file of the Metropolitan Magistrate, FTC-I, Egmore, Allikulam, Chennai.

2. The case of the petitioner is that the respondent has borrowed a sum of Rs.5,00,000/- on 04.02.2013 for her family need. Since the respondent is well known to the petitioner through her husband, he gave money without obtaining any security. When the complainant demanded for return of the said money, the respondent issued a cheque for a sum of Rs.5,00,000/- in favour of the petitioner. When the petitioner deposited the same for encashment, the said cheque was returned with an endorsement "Funds insufficient" by the Bank on 01.10.2015. Thereafter, the petitioner issued legal notice to the respondent on 14.10.2015 calling upon her to repay the amount within 15 days. The respondent was deliberately not received the notice. Therefore, the petitioner has filed a private complaint under Section 200 Cr.P.C. Against the respondent before the learned Metropolitan Magistrate under Section 138 of NI Act and the same was dismissed on 11.08.2022 for non prosecution. Challenging the same,



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the present petition has been filed to condone the delay of 404 days in filing the appeal.

3. The learned counsel for the petitioner submitted that the Advocate, who appeared before the lower court on behalf of the petitioner, has not informed about the stage of the case and he was unable to pay batta in time. Further the petitioner fell in sick due to typhoid fever and admitted as an inpatient in immobile condition. Hence, the learned counsel prays to allow this petition.

4. The learned counsel for the respondent submitted that the respondent is a lady and having two daughters and her husband passed away in the year 2022. The petitioner and the respondent husband are close friends, due to the relationship, the petitioner has lent a sum of Rs.5,00,000/- to the respondent without obtaining any security, which is not believable. Further, the case has been registered in the year 2016 and till the year 2022, the petitioner has not appeared for hearing properly and failed to proceed with the case. Therefore, the trial Court has rightly dismissed the complaint, which does not warrant any interference.



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5. Heard both sides and perused the materials available on record.

6. The facts of the case are not in dispute. This Court perused the impugned order. On perusal of the same, it is seen that the case has filed in the year 2016 and bailable warrant to the accused has not been paid. The petitioner is absent for long period and there was no representation also. Further, this Court is not convincing the reasons stated in the affidavit for the delay of 404 days. The reasons appeared to be very vague and unbelievable. Therefore, the petition for condoning delay is liable to be dismissed.

7. Accordingly, the miscellaneous petition is dismissed and consequently, the appeal is rejected at the SR stage itself.

04.07.2024

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To

The Metropolitan Magistrate,
FTC-I, Egmore, Chennai.



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M.DHANDAPANI,J.

Rli

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