



Crl.M.P.(MD)No.599 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.09.2024

Delivered on : 20.09.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.M.P.(MD)No. 599 of 2024

in

Crl.R.C(MD)No. SR 44919 of 2023

M/s.Ramana's Food Product,
Rep.by its Chairman, V.Sowmiyan

: Petitioner

Vs.

Rathina Vadivel

: Respondent

PRAYER in Crl.M.P(MD)No.599 of 2024: Criminal Miscellaneous Petition filed under Section 5 of the Limitation Act, to condone the delay of 633 days in filing the above revision petition.

PRAYER in Crl.R.C(MD)No.SR 44919 of 2023: Criminal Revision filed under Section 397 r/w 401 of Cr.P.C., to set aside the order in Cr.M.P. No.3706 of 2019, dated 23.09.2021 passed by the learned Judicial Magistrate No.I, Tiruchirappalli.

For Petitioner : Mr.I.Romeo Roy Alfred

For Respondents : Mr.I.Muthaiah



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ORDER

The Criminal Miscellaneous Petition has been filed seeking orders to condone the delay of 633 days in filing the revision petition, challenging the order passed in Cr.M.P.No.3706 of 2019, dated 23.09.2021 on the file of the learned Judicial Magistrate No.I, Tiruchirappalli.

2. It is not in dispute that the respondent/complainant has filed a private complaint under Section 200 of Cr.P.C., against the petitioner/accused for the offence under Section 138 of Negotiable Instruments Act and the learned Magistrate, after complying with the necessary formalities has taken the case on file in C.C.No.485 of 2018 and that the case is pending in part-heard stage.

3. Pending trial, the respondent/complainant has filed a petition under Section 143(a) of the Negotiable Instruments Act 1989 (as amended) claiming interim compensation at 20% of the cheque amount. The petitioner/accused has filed his counter statement raising objections. The learned Magistrate, after enquiry, has passed an order, dated 23.09.2021



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allowing the petitioner and thereby directing the petitioner/accused to pay 20% of the cheque amount as interim compensation within 60 days from the date of the said order. Aggrieved by the said order, the accused has preferred the present revision along with the above application to condone the delay of 633 days in filing the revision.

4. The case of the petitioner is that the petitioner's counsel, on his instructions, filed the copy application on 28.10.2021 and the copies were made on 10.11.2021 and delivered on 10.11.2021; that due to the petitioner's ill health and due to his financial constrains, which was coupled with pandemic disaster, he was unable to file the revision petition in time; that the petitioner has also filed medical records for proving that he had undertaking medical treatment and by that time, he could approach the counsel for filing the revision, the delay of 633 days had been ensued; that the delay is neither willful nor wanton and that therefore, the delay has to be condoned.

5. The respondent/complainant has filed detailed counter affidavit disputing the petitioner's averments and further stated that the petitioner has been dragging on the matter.



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6. It is not in dispute that the petitioner/accused has earlier filed a petition in Cr.O.P(MD)No.9359 of 2019, before this Court to quash the private complaint in C.C.No.485 of 2018 and this Court vide order, dated 28.01.2020, dismissed the said petition and directed the learned Judicial Magistrate No.I, Trichy to dispose of the said case within a period of six months.

7. The learned counsel for the respondent would submit that the petitioner has not cooperated for the trial and evaded the court process; that the trial Court has issued second Bailable Warrant against the petitioner/accused and at the instance of the petitioner, bailable warrant came to be recalled on 04.03.2021 and the case posted for trial; that though the respondent has examined himself as P.W.1; that after the completion of the complainant side evidence, the case was posted to 27.12.2021 for questioning under Section 313 of Cr.P.C; that the petitioner has never appeared before the trial Court, since 27.12.2021 and that the bailable warrant came to be issued thrice against the petitioner and he has scant regard to the Court proceedings.



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8. Considering the record available and the submission made by the learned counsel for the respondent, it is clearly evident that the petitioner has been protracting the proceedings and that he has been allowing to issue bailable warrant again and again and recalled by filing petition after petition.

9.As rightly pointed out by the learned counsel for the respondent, in the medical certificate produced along with the present petition, it has been stated that the petitioner was suffering from Type 2 Diabetes Mellitus, hypertension and chronic renal failure and his condition worsened after an attack of Covid-19 in 2020 and ever since he is not mobile and is bed ridden and that he could not travel for long distance and that the said certificate came to be issued on 27.12.2023.

10. As rightly contended by the learned counsel for the respondent, the petitioner has sworn the above affidavit in December 2023 at Madurai and hence, the contention of the petitioner that he was bed ridden and could not travel long distance as on 27.12.2023 appears to be incorrect.



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11. The learned counsel for the respondent would rely on the judgment of the Hon'ble Supreme Court in ***Esha Bhattacharjee vs. Managing Committee of Raghunathapur Nafar Academy and other*** reported in 2013(5) CTC 547 (SC), wherein the Hon'ble Apex Court, considering the various authorities has held that the lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact; that the concept of liberal approach has to encapsule the conception of reasonableness and it cannot be allowed a totally unfettered free play and that the case with in ordinate delay warrants strict approach.

12. As rightly contended by the learned counsel for the respondent, the above decision is squarely applicable to the case on hand. In the present case, the petitioner has sought to condone the delay of 633 days, which is inordinate and the petitioner has not given any acceptable reason or sufficient explanation for the delay occurred.

13. As already pointed out, the petitioner has only produced the medical certificate issued by the Medical officer attached to the private



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hospital, but he has not produced any medical records to substantiate the same.

14. The learned counsel for the petitioner would submit that the learned Magistrate, without assigning any reason, has passed the impugned order under Section 143(A) of Negotiable Instruments Act, directing the petitioner to pay 20% of the cheque amount and that the High Court of Karnataka in the case of **Smt.Vijaya and another vs. the Municipal Commissioner, City Municipal Council, Koppal** in Criminal Petition No.100261/2022, dated 17.02.2022, has held that the Court has to assign reason as to why 20% of the amount is awarded as interim compensation and that since the learned Magistrate has not assigned any reason, that by itself is a ground to set aside the impugned order.

15. But, I am not in agreement with the said contention. The learned Magistrate, considering the ingredients required for invoking Section 143(A) NI Act and by relying on some decisions, has rightly allowed the petition and directed the petitioner to pay 20% of the cheque amount and as such, the impugned order cannot be found fault with.



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16. Viewing from any angle, this Court is of the clear view that the petitioner is not entitled to the relief claimed.

17. In the result, the Criminal Miscellaneous Petition is dismissed. Consequently, the Criminal Revision Case is rejected at the SR stage itself. The learned Judicial Magistrate No.I, Tiruchirappalli, is directed to complete the trial and dispose of the C.C.No.485 of 2018 within a period of two months from the date of receipt of copy of this order.

20.09.2024

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

To

The Judicial Magistrate No.I,
Tiruchirappalli.



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K.MURALI SHANKAR,J.

das

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Dated: 20.09.2024