



Crl.R.C.(MD).No.409 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 07.06.2024

CORAM

THE HONOURABLE MR. JUSTICE K.K.RAMAKRISHNAN

Crl.R.C.(MD).No.409 of 2024

Bavani

... Petitioner

Vs.

Sivakumar

... Respondent

PRAYER: This Civil Revision Case is filed under Sections 397 r/w 401 of the Criminal Procedure Code, to call for the records and set aside the order dated 21.02.2024 passed in Crl.M.P.No.664 of 2024 on the file of the Judicial Magistrate, Tenkasi and direct the learned Judicial Magistrate, Tenkasi to number the S.T.C. Unnumbered/2023 on the file of the Judicial Magistrate, Tenkasi.

For Petitioner : Mr.P.Edin Brough

For Respondent : No appearance



Crl.R.C.(MD).No.409 of 2024

WEB COPY

ORDER

This Criminal Revision Case has been filed to set aside the order dated 21.02.2024 passed in Crl.M.P.No.664 of 2024 by the learned Judicial Magistrate, Tenkasi and to direct the learned Judicial Magistrate, Tenkasi to number S.T.C.Unnumbered/2023 on the file of the Judicial Magistrate, Tenkasi.

2. The petitioner and the respondent are known to each other. The respondent borrowed a sum of Rs.2,30,000/- from the petitioner for his family expenditure and he had promised to return the above said amount within two months. On the same day, the petitioner issued cheque for a sum of Rs.2,30,000/-. The petitioner presented the said cheque before the bank and the same was returned stating “funds insufficient”. Thereafter, the petitioner issued notice to the respondent on 24.08.2019 and the same was received by the respondent on 26.08.2019 and he sent an evasive reply to the respondent. Hence, the respondent filed a complaint under Section 138 of Negotiable Instruments Act and the same was taken on file in S.T.C.No.1472 of 2019 before the learned Judicial Magistrate,



CrI.R.C.(MD).No.409 of 2024

WEB COPY

Tenkasi and the same was dismissed on 10.07.2023 stating that the case was filed prematurely with liberty to the petitioner to file a fresh complaint within one month from the date of that order and also stating the delay in filling the complaint will be treated as condoned under the proviso to clause (b) of Section 142 of the NI Act.

3. As per the direction of the learned Judicial Magistrate, Tenkasi, the petitioner has preferred a fresh case within the delay of 40 days in CrI.M.P(MD).No.664 of 2023 before the Judicial Magistrate, Tenkasi and the same was dismissed without any *bonafide* reasons. Challenging the same, the present revision has been filed.

4. The respondent has received the notice and has not appeared. Therefore this court considered the submission of the Learned counsel for the petitioner and perused the records and also impugned order and decided the matter on merits.

5. The respondent in order to repay this debt amount of Rs. 2,30,000/- gave the cheque dated 08.08.2019. The petitioner presented



Crl.R.C.(MD).No.409 of 2024

WEB COPY

the said cheque with his bank on 09.08.2019. The same was returned with endorsement as “Fund Insufficient” on 17.08.2019. The petitioner sent the legal notice on 24.08.2019 and the same was received by the respondent on 26.08.2019. On 28.08.2019, he has sent a reply. The petitioner has filed the complaint under section 138 of Negotiable instrument Act before expiry of 15 days i.e., on 03.09.2019 and the same was taken in S.T.C.No.1472 of 2019. Therefore, the respondent had appeared and raised the question of maintainability of the said complaint. The Learned Judicial Magistrate accepting the same has dismissed the complaint with liberty to file the fresh complaint as per the order observation made in the Crl.O.P.(MD).No. 5109 of 2018.

6. As per the reference answered in Crl.O.P.(MD).No. 5109 of 2018, the petitioner ought to have filed the complaint within one month from the date of dismissal of the complaint by the Learned Trial Judge i.e., from 10.07.2023. The petitioner has filed the fresh complaint through online on 09.08.2023. The same has been inadvertently not processed and hence the petitioner filed the complaint with a delay of 40 days. After the 09.08.2023 the petitioner was suffering from the



CrI.R.C.(MD).No.409 of 2024

unexpected gynaecological issues and therefore, she filed the petition with delay of 40 days on 16.09.2023. The Learned trial judge has not accepted the said reason and dismissed the complaint.

7.This Court is unable to concur with the reasoning of the Learned Trial Judge that the petitioner has not adduced any reason to condone the delay and no certificate was produced to substantiate the medical issue. Further, reasoning of the Learned Trial Judge that the petitioner has not disclosed the earlier proceedings is not correct. In the present complaint the petitioner clearly stated that in paragraph 6 that the Learned Trial Judge has granted time to file the present complaint in accordance with the CrI.O.P.(MD).No. 5109 of 2018. Further the petitioner initially filed the online complaint on 09.08.2023 but due to the technical glitches the same was not processed.

8.Due to his medical illness she filed the complaint with the delay of 40 days. This is not a case where the petitioner intentionally and wilfully slept over and filed with delay. Before this Court, the learned counsel for petitioner submitted the medical records to show her illness.



Further, the gynaecological issue is quite normal and this court has every reason to believe the same. The Hon'ble Supreme Court in the case of **N. Balakrishnan v. M. Krishnamurthy**, reported in **(1998) 7 SCC 123**, has held as follows:

9.It is axiomatic that condonation of delay is a matter of discretion of the court. Section 5 of the Limitation Act does not say that such discretion can be exercised only if the delay is within a certain limit. Length of delay is no matter; acceptability of the explanation is the only criterion. Sometimes delay of the shortest range may be uncondonable due to a want of acceptable explanation whereas in certain other cases, delay of a very long range can be condoned as the explanation thereof is satisfactory. Once the court accepts the explanation as sufficient, it is the result of positive exercise of discretion and normally the superior court should not disturb such finding, much less in revisional jurisdiction, unless the exercise of discretion was on wholly untenable grounds or arbitrary or perverse. But it is a different matter when the first court refuses to



condone the delay. In such cases, the superior court would be free to consider the cause shown for the delay afresh and it is open to such superior court to come to its own finding even untrammelled by the conclusion of the lower court.

10.The reason for such a different stance is thus:

The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The time-limit fixed for approaching the court in different situations is not because on the expiry of such time a bad cause would transform into a good cause.

11.Rules of limitation are not meant to destroy the rights of parties. They are meant to see that parties do not resort to dilatory tactics, but seek their remedy promptly. The object of providing a legal remedy is to repair the damage caused by reason of legal injury. The law of limitation fixes a lifespan for such legal remedy for the redress of the legal injury so suffered. Time is precious and wasted time would never



WEB COPY



CrI.R.C.(MD).No.409 of 2024

revisit. During the efflux of time, newer causes would sprout up necessitating newer persons to seek legal remedy by approaching the courts. So a lifespan must be fixed for each remedy. Unending period for launching the remedy may lead to unending uncertainty and consequential anarchy. The law of limitation is thus founded on public policy. It is enshrined in the maxim interest reipublicae ut sit finis litium (it is for the general welfare that a period be put to litigation). Rules of limitation are not meant to destroy the rights of the parties. They are meant to see that parties do not resort to dilatory tactics but seek their remedy promptly. The idea is that every legal remedy must be kept alive for a legislatively fixed period of time.

12.A court knows that refusal to condone delay would result in foreclosing a suitor from putting forth his cause. There is no presumption that delay in approaching the court is always deliberate. This Court has held that the words “sufficient cause” under Section 5 of the Limitation Act should receive a liberal construction so as to advance substantial justice



WEB COPY



CrI.R.C.(MD).No.409 of 2024

vide vShakuntala Devi Jainv.Kuntal Kumari[AIR 1969 SC 575 : (1969) 1 SCR 1006] and State of W.B. v. Administrator, Howrah Municipality[(1972) 1 SCC 366 : AIR 1972 SC 749] .

13.It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.



WEB COPY

7. Apart from that, the Hon'ble Supreme Court in similar circumstances, in the case of ***Yogendra Pratap Singh Vs. Savitri Pandey***, reported in ***2014 (10) SCC 713***, has allowed the complainant to file a fresh complaint. The relevant paragraph is extracted hereunder:

35. Can an offence under Section 138 of the NI Act be said to have been committed when the period provided in clause (c) of the proviso has not expired? Section 2(d) of the Code defines "complaint". According to this definition, complaint means any allegation made orally or in writing to a Magistrate with a view to taking his action against a person who has committed an offence. Commission of an offence is a sine qua non for filing a complaint and for taking cognizance of such offence. A bare reading of the provision contained in clause (c) of the proviso makes it clear that no complaint can be filed for an offence under Section 138 of the NI Act unless the period of 15 days has elapsed. Any complaint filed before the expiry of 15 days from the date on which the



WEB COPY



CrI.R.C.(MD).No.409 of 2024

notice has been served on the drawer/accused is no complaint at all in the eye of the law. It is not the question of prematurity of the complaint where it is filed before the expiry of 15 days from the date on which notice has been served on him, it is no complaint at all under law. As a matter of fact, Section 142 of the NI Act, inter alia, creates a legal bar on the court from taking cognizance of an offence under Section 138 except upon a written complaint. Since a complaint filed under Section 138 of the NI Act before the expiry of 15 days from the date on which the notice has been served on the drawer/accused is no complaint in the eye of the law, obviously, no cognizance of an offence can be taken on the basis of such complaint. Merely because at the time of taking cognizance by the court, the period of 15 days has expired from the date on which notice has been served on the drawer/accused, the court is not clothed with the jurisdiction to take cognizance of an offence under Section 138 on a complaint filed before the expiry of 15 days from the date of receipt of notice by the drawer of the cheque.



Crl.R.C.(MD).No.409 of 2024

WEB COPY

8.The said principle also is reiterated by the Hon'ble Supreme Court in the case of *Gajanand Burange Vs Laxmi Chand Goyal* judgment reported in *2022 SCC Online SC 1711*.

9.Therefore, this Court inclines to condone the delay and set aside the order passed by the Learned Judicial Magistrate.

10. Accordingly, this Criminal Revision Case stands allowed and the order passed in Crl.M.P.No.664 of 2024 dated 21.02.2024, by the Learned Judicial Magistrate,Tenkasi, is set aside and the Learned Judicial Magistrate, Tenkasi is hereby directed to number the complaint and take cognizance in accordance with law.

07.06.2024

Index : Yes / No
Internet : Yes / No
tta

To,
The Judicial Magistrate, Tenkasi



WEB COPY



CrI.R.C.(MD).No.409 of 2024

K.K.RAMAKRISHNAN,J

tta/vsg

CrI.R.C.(MD).No.409 of 2024

07.06.2024