



CRL MP(MD) No.109 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

( Criminal Jurisdiction )

Friday, the Fifth day of April Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice K.K. RAMAKRISHNAN

CRL MP(MD) No.109 of 2024

in

CRL A(MD) SR.No.38822 of 2021

EDWIN CALVIN PAUL  
REP.BY HIS POWER HOLDER,  
EDWIN JOHNSON

... PETITIONER/ APPELLANT

Vs

D.RAJA SUDHAKAR

... RESPONDENT/RESPONDENT

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Condone the delay of 956 days in filing the Criminal Appeal against the order of acquittal for offences U/s.138 of NI Act in C.C.No.125/2013 dt.31.05.2017 on the file of the Judicial Magistrate (Fast Track Court No.1), Nagercoil.

Prayer in CRL A(MD) SR.No.38822 of 2021 :

To call for the records relating to the judgment passed in C.C.No.125/2013 dated 31.05.2017 on the file of the Judicial Magistrate (Fast Track Court No.I), Nagercoil and set aside the same and convict the accused.

Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.SARAVANAN.D, Advocate for the petitioner and of MR.S.C.HEROLD SINGH, Advocate on behalf of the Respondent, the court made the following order:-



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This Criminal Miscellaneous Petition has been filed to condone the delay of 956 days in filing the Criminal Appeal.

2.The petitioner is the complainant in C.C.No.125 of 2013 on the file of the Judicial Magistrate (Fast Track Court No.1), Nagercoil. He initiated the proceedings under Section 138 of Negotiable Instruments Act against the respondent for his alleged act of dishonored cheque issued by him to discharge the debt amount of Rs.1,00,000/-. The learned trial judge after conducting the elaborate trial acquitted the respondent on the ground that there was no legally enforceable debt by passing the impugned order dated 31.05.2017.

3.Before the said impugned judgment, he had undergone treatment for Arthritis at Kerala Ayurvedic Treatment Centre. Due to the said treatment, he incurred huge expenditure and unable to conduct his counsel. Thereafter, after partial recovery, he contacted the lower Court counsel and expressed his financial constraint. The counsel had also informed that there was a dispute relating to the filing of the appeal before this Court or Principal District Court. Therefore, he advised to generate the fund to file the appeal. Due to the further health condition and continuous treatment and financial constraints, he is unable to file this appeal before this Court within time. Hence, he seeks for condonation of delay of 956 days in filing the Criminal Appeal.

4.The learned counsel for the petitioner reiterated the above reasons stated in



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the affidavit and also further submitted that there is abundant material to prove the case of the petitioner before the trial Court. The issuance of cheque was admitted and hence, he has prima facie case in succeeding the above appeal and hence, in the interest of justice, he requested this Court to condone the delay.

5.The learned counsel for the respondent vehemently opposed to condone the delay without filing counter and specifically opposed that there was no material produced to show his illness and the pendency of the issue before the Full Bench is not a matter to file this appeal with delay. There was no bona fide explanation on the side of the petitioner. Hence, he seeks for dismissal of this petition.

6.This Court considered the rival submission and perused the record.

7.It is the specific case of the petitioner that he has undergone treatment for Arthritis at Kerala Ayurvedic Treatment Centre and he incurred huge expenditure. Further, there was a dispute relating to the filing of the appeal against the judgment of acquittal under Section 138 of NI Act is before this Court or Principal District Court. Even though, there was no material to prove his case of the taking treatment, the said pleading was not denied by filing counter. Apart from that, this Court finds no mala fide in the said reasons. In addition to that, it is true that there was a dispute relating to the filing the appeal before this Court and the same was settled vide judgment of the Hon'ble Full Bench of this Court, dated 28.05.2020, in the case of



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K.Rajalingam Vs. R.Suganthalakshmi reported in 2020 4 CTC 1.

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8.Further, this Court is duty bound to bring the principle laid down by the Hon'ble Supreme Court to condone the delay in filing the appeal in the case of N. Balakrishnan v. M. Krishnamurthy, reported in (1998) 7 SCC 123, the relevant paragraphs are extracted hereunder:-

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 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



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remedy may lead to unending uncertainty and consequential anarchy.

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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 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



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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.

9. Applying the above principle, this Court satisfied with the reasons stated in the affidavit and condoned the delay in filing the above appeal in order to render the decision on merits. This Court finds no willful negligence on the part of the petitioner in filing this appeal with the delay.

10. In view of the special circumstances of the case, this Court inclined to condone the delay with imposing the cost of Rs.10,000/- (Rupees Ten Thousand Only) to the respondent within a period of two weeks from the date of receipt of a copy of this order, failing which, this petition stands dismissed automatically without further reference to this Court.



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11. Accordingly, this petition is allowed. List this case on 22.04.2024 for  
"reporting compliance".

sd/-  
05/04/2024

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Sub-Assistant Registrar (C.S. I / II / III / IV )  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

vsg

TO

1 THE JUDICIAL MAGISTRATE (FAST TRACK COURT NO.I), NAGERCOIL.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,  
KANYAKUMARI DISTRICT AT NAGERCOIL.

+1 CC to M/s.D.SARAVANAN, Advocate ( SR-4286[I] dated 10/04/2024 )

ORDER IN  
CRL MP(MD) No.109 of 2024 in  
CRL A(MD) SR.No.38822 of 2021  
Date :05/04/2024

RS/GS/SAR-(12.04.2024) 7P 4C  
Madurai Bench of Madras High Court is issuing  
certified copies in this format from 17/07/2023