



Crl.M.P.(MD).No.17106 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
( Criminal Jurisdiction )

Wednesday, the Third day of April Two Thousand and Twenty Four

PRESENT

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

Crl.M.P.(MD).No.17106 of 2023

in

Crl.A.(MD).SR.No.44186 of 2023

J.SPURGEON

... PETITIONER/ APPELLANT/COMPLAINANT

Vs

SELVAM @ PEPSI SELVAM

... RESPONDENT/RESPONDENT/ACCUSED

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 601 days in filing the above Criminal Appeal against the Judgment of acquittal dt.13.10.2017 made in STC.No.40 of 2014 on the file of Fast Track (Magisterial Level)No.II,Nagercoil.

Prayer in Crl.A.(MD).SR.No.44186 of 2023:

To call for the records relating to the Judgment of acquittal dated 13.10.2017 made in S.T.C.No.40 of 2014 on the file of Fast Track(Magisterial Level) No.II, Nagercoil and set aside the same as illegal and allow the above appeal by convicting the accused under Section 138 of N.I Act.

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 MR.M.U.MOHAMED ASLAM, Advocate for M/S.AJMAL ASSOCIATES, Advocate for the petitioner and of MR.S.SURESH KUMAR, 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 601 days in filing the Criminal Appeal against the order of acquittal dated 13.10.2017 passed in S.T.C.No.40 of 2014 on the file of the Fast Track (Magisterial level) No.II, Nagercoil.

2.The petitioner preferred a complaint under 138 of Negotiable Instruments Act, against the respondent, before the Fast Track (Magisterial level) No.II, Nagercoil, for his alleged act of dishonored cheque issued by him to discharge the debt amount of Rs.54,00,000/- and the same was taken on file in S.T.C.No.40 of 2014 by the Fast Track (Magisterial level) No.II, Nagercoil. 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 13.10.2017.

3.Challenging the same, the petitioner/complainant in S.T.C.No.40 of 2014 filed this appeal with delay of 601 days. In the affidavit, it is stated that he was arrested in some other case in the month of October, 2021 and he was released only on 30.09.2022. Due to the further serious ailments, he is unable to file this appeal before this Court within time. Hence, he seeks for condonation of delay of 601 days in filing the Criminal Appeal.



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4.The learned counsel for the petitioner reiterated the above reasons stated in 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 without filing the counter objected to condone the delay of 601 days.

6.This Court perused the record and the reasons stated in the affidavit filed in support of the condone delay petition.

7.The Hon'ble Supreme Court has laid down the following the principle to condone the delay in filing the appeal in the case of N. Balakrishnan v. M. Krishnamurthy, reported in (1998) 7 SCC 123:-

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



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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 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



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fixed period of time.

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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 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,



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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.

8.It is the specific case of the petitioner that he was arrested in some other case in the month of October 2021 and hence, he is unable to file this appeal before this Court within time. The said reason is bona fide and the respondent has not adduced any contra evidence. This Court finds no willful negligence on the part of the petitioner in filing this appeal with the delay. Therefore, this Court satisfies with the above bona fide reason and condones the delay in filing the above appeal in order to render the decision on merits.

9.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's counsel 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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10. Accordingly, this petition is allowed. List this case on 30.04.2024 for "reporting compliance".

sd/-  
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/04/2024

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

VSG

TO

1. THE JUDGE, FAST TRACK (MAGISTERIAL LEVEL) NO. II, NAGERCOIL.

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

+1 CC to M/s. M/S. AJMAL ASSOCIATES, Advocate ( SR-4177[I] dated 04/04/2024 )

ORDER

IN

Crl.M.P.(MD).No.17106 of 2023

in

Crl.A.(MD).SR.No.44186 of 2023

Date : 03/04/2024

RK/GS (25/04/2024) 7P / 4C

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