



Crl.R.C.(MD)No.1199 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
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Reserved on : 20.02.2025

Pronounced on : 28.02.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.R.C.(MD)No.1199 of 2023

C.Prabakaran

... Petitioner

Vs.

M.Shanthi

... Respondent

Prayer : This Criminal Revision Petition filed under Sections 397 and 401 Cr.P.C., to set aside the order passed by the learned Judicial Magistrate, Fast Track Court @ ML, Karur in C.M.P.No.7810 of 2022 in S.T.C.No.Nil of 2022 forthwith.

For Petitioner : Mr.T.Nitish
for M/s.K.P.S.Law Associate

For Respondent : Mr.M.P.Senthil



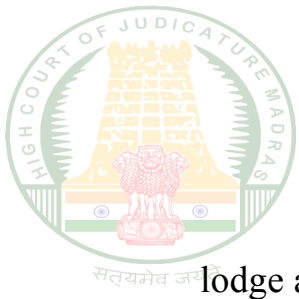
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ORDER

The Criminal Revision is directed against the order passed in Crl.M.P.No.7810 of 2022 in S.T.C.No. ____ of 2022 dated 05.06.2023 on the file of the Judicial Magistrate, Fast Track Court @ Magisterial Level, Karur, dismissing the petition filed under Section 142(b) of Negotiable Instruments Act.

2. The case of the petitioner/complainant is that the respondent/accused borrowed a sum of Rs.4,50,000/- on 02.01.2022 for her family expenses agreeing to repay the same within a month, that the respondent, in order to discharge the said liability, issued a post-dated cheque dated 03.03.2022 drawn in Tamilnad Mercantile Bank Ltd., Srivilliputhur Branch for Rs.4,50,000/- in favour of the petitioner, that the petitioner has presented the said cheque for collection on 03.03.2022 through his banker IDBI, Karur Branch, but the cheque was returned 'dishonored', that the petitioner has then sent a legal notice dated 11.03.2022 directing the respondent to pay the amount covered by the cheque, that the respondent having received the legal notice on 14.03.2022 has neither sent any reply nor made any payment and therefore, the petitioner was constrained to



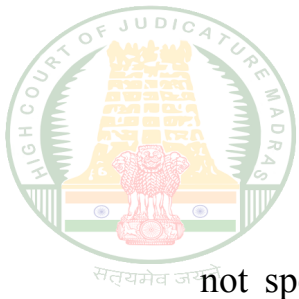
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lodge a complaint under Section 200 Cr.P.C. against the respondent for the offence under Sections 138 r/w 142 of Negotiable Instruments Act and that since there was a delay in filing the complaint, the petitioner filed the complaint along with a petition to condone the delay under Section 142(b) of Negotiable Instruments Act.

3. The petitioner's further case is that since the respondent received the legal notice on 14.03.2022, stipulated time of 15 days for payment expired on 28.03.2022, that limitation period to file the complaint started on 29.03.2022 and expired on 27.04.2022, that since the petitioner was not well and due to unavoidable reason, he could not file the complaint within the time, that the delay is neither willful nor wanton but due to the reasons beyond his control, that the petitioner will be put much hardship and loss, if the delay is not condoned and that therefore, the petitioner has come forward with the above petition to condone the delay of 153 days in filing the complaint.

4. The respondent has filed a counter statement disputing the petitioner's affidavit averments and further stated that the petitioner has

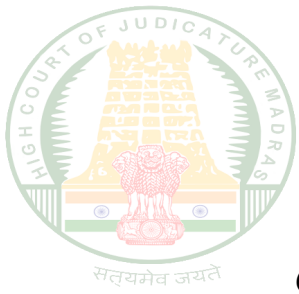


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not specifically stated about the nature of the alleged illness, period of illness, the date on which the petitioner recovered from the illness, when the petitioner met his counsel and came to know about the delay of 153 days in filing the complaint and the alleged unavoidable reason, that the reasons shown in the petitioner's affidavit is an invented story to maintain this frivolous petition, that the petitioner is not diligent enough to prosecute the case, that the petitioner knowing fully well that he has no case to succeed the case, has filed the complaint with a delay of 153 days, that the respondent will be put to unforeseen loss and hardship, if the petition is allowed and that therefore, the petition is liable to be dismissed.

5. The learned Magistrate, after enquiry, has passed the impugned order dated 05.06.2023 dismissing the petition. The reasons assigned for the dismissal is that the petitioner has not explained the nature of illness, period of illness and the alleged unavoidable reasons but instead, he has given a plain blanket reason as illness and unavoidable reason, that the petitioner has not produced the medical records and that therefore, the reasons are not sufficient and convincing to condone the delay of 153 days.

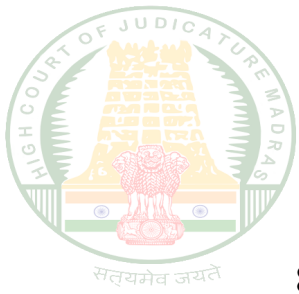


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6. The learned counsel appearing for the petitioner would submit that there cannot be any hard and fast rule for deciding an application to condone the delay, that the learned Magistrate failed to consider that the respondent did not give any reply notice to the statutory notice issued by the petitioner and the same would go to show that the respondent did not opt to deny his legal liability, that the said aspect is one of the point for merit to be decided, that the Court should consider the delay petition in a lenient view to meet the end of justice, that the petitioner has stated that the delay is due to his illness and some unavoidable circumstances and that the petitioner will be put to great prejudice and cause injury, if the dismissal of the delay condonation petition is not set aside.

7. The learned counsel appearing for the petitioner would further submit that the petitioner has relied on a decision of this Court in ***Munirathinammal Vs. T.E.Aruna*** passed in ***Crl.R.C.No.566 of 2017 dated 20.06.2022***, but the learned Magistrate, by simply observing that the facts of the decision case are not similar to the case on hand and that the reasons stated by the petitioner are not clear and are not explained sufficiently, has dismissed the petition.



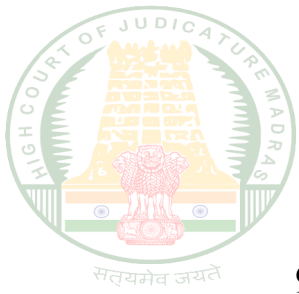
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8. In ***Munirathinammal's*** case referred above, there was a delay of 353 days in filing the complaint under Section 138 of Negotiable Instruments Act and even in that case also, the learned Magistrate dismissed the petition on the ground that the reasons furnished for condonation of delay was not sufficient and the case of the complainant cannot be believed and also on the ground that the complainant has remedy before the Civil Forum to recover the debt. Considering the above fact situation, a learned Judge of this Court has observed;

“5. It is settled law that there cannot be any hard and fast rule for deciding an application for condonation of delay. The expression “sufficient cause” in Section 5 of the Limitation Act as well as in Section 142 (b) of Negotiable Instrument Act is elastic enough to enable the Courts to apply the law in a purposeful manner to meet the ends of justice. The Courts always held that a liberal approach should be adopted while considering the petition for condoning the delay so that substantive rights of the parties are not defeated merely because of the delay.

6. We are of the view that Courts have to be pragmatic in their approach while dealing with condone delay petitions, unless the delay is unduly long and it appears to the Court that the lis itself is either vexatious or frivolous.”



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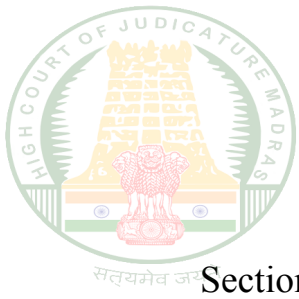
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9. The learned Judge, by holding that condoning the delay would be in the best interest of justice and the parties are to be allowed to adjudicate the disputes in the trial, allowed the revision and thereby set aside the order of the learned Magistrate.

10. In the case on hand, as already pointed out, there is a delay of 153 days in filing the complaint and according to the petitioner, the delay is due to his illness and unavoidable circumstances. No doubt, the petitioner has not elaborated anything further.

11. When considering a petition to condone the delay in filing the complaint under Section 138 of Negotiable Instruments Act, the Court should adopt a pragmatic approach. Dismissing the petition would unjustly deprive the complainant all their substantive rights, effectively shutting down their legitimate prosecution.

12. The Courts must distinguish between condoning the delay in miscellaneous applications or in ancillary matters and excusing delay in filing substantive cases or primary proceedings, such as complaint under



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Section 138 of Negotiable Instruments Act. The latter warrants a more liberal approach, as dismissal would significantly prejudice the complainant's substantive rights and undermine their ability to seek justice. To put it in other way, rejection of such complaint at threshold by refusing to condone the delay would substantially impact the complainant's rights and impede their access to justice.

13. In the case on hand, as already pointed out, the learned Magistrate failed to consider the decision in *Munirathinammal's* case in its proper context and mechanically distinguished it by observing that two cases are different.

14. As rightly contended by the learned counsel appearing for the petitioner, the delay is not inordinate and the reason assigned is sufficient enough to condone the delay of 153 days. However, if the complainant's delayed attempt to lodge the complaint is not bonafide or if their actions exhibit malafide, the learned Magistrate would be justified in refusing to condone the delay. In the case on hand, there is no indication that the complainant has acted with malafide or bad faith.



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15. Considering the above, this Court is of the view that the petitioner has to be permitted to prosecute the case and as such, the delay is to be condoned, but on terms.

16. In the result, this Criminal Revision Case will be allowed on payment of cost of **Rs.2,000/- (Rupees Two Thousand only)** to the High Court Legal Service Authority attached to this Bench by the petitioner on or before **14.03.2025**, failing which, this petition shall stand dismissed automatically.

17. Post the matter on **17.03.2025** for reporting compliance.

28.02.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

Note : Issue order copy on 03.03.2025

To

1. The Judicial Magistrate,
Fast Track Court @ Magisterial Level, Karur.



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K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in
Crl.R.C.(MD)No.1199 of 2023

Dated : 28.02.2025