



CrI.R.C.(MD)No.1316 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.02.2025

Pronounced on : 28.02.2025

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

CrI.R.C.(MD)No.1316 of 2024

and

CrI.M.P.(MD)No.13363 of 2024

Sathiyavadivu

... Petitioner

Vs.

Shanmugam

... Respondent

Prayer : This Criminal Revision Petition filed under Sections 438 r/w 442 BNSS, to call for the records and set aside the order in CrI.M.P.No.3350 of 2024 in Filing Number 3927 of 2024 in unnumbered S.T.C.No.____ of 2024 on the file of the Judicial Magistrate Court, Manamadurai, Sivagangai District dated 10.10.2024.

For Petitioner : Mr.C.Sureshkannan

For Respondent : Mr.S.C.Herlod Singh

ORDER

The Criminal Revision is directed against the order made in



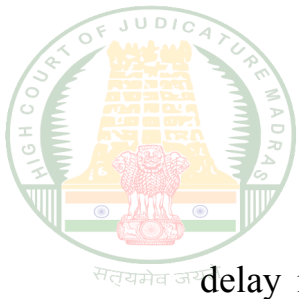
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Crl.M.P.No.3350 of 2024 dated 10.10.2024 allowing the petition filed under Section 142(1)(b) of Negotiable Instruments Act.

2. It is evident from the records that the respondent/complainant has filed a private complaint under Section 200 Cr.P.C. against the petitioner/accused for the alleged offence under Section 138 of Negotiable Instruments Act along with the above petition to condone the delay of 25 days in preferring the complaint.

3. The case of the respondent/complainant is that the petitioner/accused received the statutory notice sent on behalf of the respondent/complainant on 06.06.2024 and since the petitioner/accused has not complied with the notice demand, the respondent/complainant was constrained to file the complaint, that the respondent/complainant ought to have filed the complaint on 22.07.2024, that since the respondent/complainant was suffering from fever, body pain and cold, he could not met his counsel and file the complaint within the time prescribed, that the respondent/complainant, after recovering from his illness, has filed the complaint on 14.08.2024 and there occurred a delay of 25 days, that the



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delay is neither willful nor wanton and that the respondent/complainant will suffer loss and hardship, if the delay is not condoned.

4. The petitioner/accused filed a counter statement stating that the respondent/complainant has filed the above petition only to condone the delay of 25 days from 22.07.2024 to 14.08.2024, that the complaint was presented into the Court only on 17.08.2024, that the complaint is silent about the delay of 3 days from 14.08.2024 to 17.08.2024, that the respondent/complainant has not assigned any reason for the delay of 3 days, that there are no merits in the petition and that therefore, the same is liable to be dismissed.

5. The learned Magistrate, after conducting an enquiry, has passed the impugned order dated 10.10.2024 allowing the petition and thereby condoned the delay in preferring the complaint. Challenging the said order, the present revision came to be filed.

6. The learned counsel appearing for the petitioner would submit that the learned Magistrate failed to appreciate the fact that they

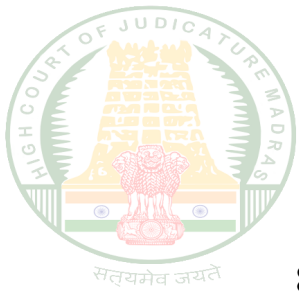


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purposefully miscalculated the delay and presented the petition under Section 142(1)(b) of Negotiable Instruments Act, that the learned Magistrate failed to consider the fact that the delay was calculated from 22.07.2024 to 14.08.2024 but the complaint was filed on 17.08.2024, that the complaint should have been filed on or before 22.07.2024 but the same was filed only on 17.08.2024, that the reasons assigned by the learned Magistrate for allowing the petition are not proper and that therefore, the impugned order is liable to be interfered with.

7. The learned counsel appearing for the petitioner would rely on a decision of this Court in *M/s.Career & Career Edu Services Private Limited and another Vs. Ganadipathy Tulsi's Jain Engineering College, Vellore* passed in *Crl.O.P.No.26062 of 2018 dated 06.03.2019* and would submit that a complaint under Section 138 of Negotiable Instruments Act filed beyond 30 days from the expiry of 15 days of the receipt of statutory notice cannot be entertained, that the learned Magistrate has entertained the complaint by condoning the delay, for which, there was no acceptable explanation and that the learned Magistrate has committed an error in taking cognizance of the case without considering the delay occurred.



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8. In the above decision case, the accused received the statutory notice on 13.04.2017 and the time for compliance expired on 12.04.2017 and that though the complainant ought to have preferred the complaint on or before 13.05.2017, the complaint came to be lodged only on 16.05.2017 with a delay of 4 days. A learned Judge of this Court, by observing that the complaint is barred by limitation, quashed the complaint filed under Section 138 of Negotiable Instruments Act and the relevant passages are extracted hereunder:-

“12.The Hon'ble Supreme Court of India held that for the performance of calculating the period of one month, the period has to be reckoned by excluding the date on which the cause of action arose. Further, beyond period of 30 days the complaint cannot be entertained. In the case on hand, the complaint lodged beyond 30 days namely, with delay of four days that too without any petition to condone the delay.

13.Though the submission made by the learned counsel for the respondent is that the defect of belated filing of complaint is curable one, she did not substantiate her submission with any material. Therefore, this Court is of the considered opinion that though there is a proviso under Section 142(b) of Negotiable Instruments Act, belated filing of complaint without any condone delay



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petition is not a curable defect. The complaint can be filed belatedly provided that if the complainant satisfies the Court with sufficient cause for not filing the complaint within such period by condone delay petition. The case on hand, the respondent did not file any condone delay petition and the trial Court also without calculating the days have taken cognizance. Therefore, the complaint is barred by limitation and the trial Court ought not to have taken cognizance.”

9. It is pertinent to note that in the above decision case, the complainant has not chosen to file any application to condone the delay in filing the main complaint and moreover, the petitioner has also not assigned any reason or cause sufficient enough to condone the delay. But in the case on hand, the respondent/complainant has filed an application under Section 142(1)(b) of Negotiable Instruments Act to condone the delay in preferring the complaint.

10. It is necessary to refer the judgment of this Court in ***Munirathinammal Vs. T.E.Aruna*** passed in ***Crl.R.C.No.566 of 2017*** dated ***20.06.2022***, wherein, there was a delay of 353 days in filing the complaint under Section 138 of Negotiable Instruments Act and in that



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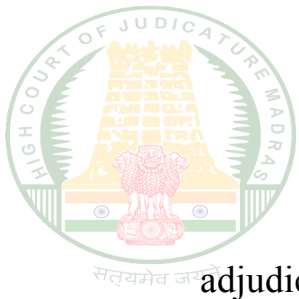
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case, the learned Magistrate dismissed the petition on the ground that the reasons furnished for condonation of delay was not sufficient and the case of the complainant cannot be believed and also on the ground that the complainant has remedy before 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.”

11. 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



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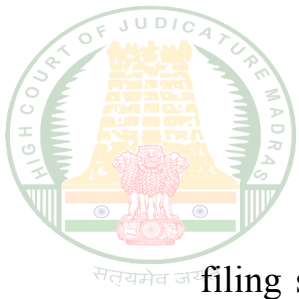
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adjudicate the disputes in the trial, allowed the revision and thereby set aside the order of the learned Magistrate.

12. In the case on hand, the respondent/complainant, in his affidavit, has stated that he was afflicted with fever, body pain, and cold, which prevented him from contacting his counsel and filing the complaint within the stipulated time frame. Although the respondent/complainant has not provided any medical evidence to corroborate his claims, it is reasonable to acknowledge that for minor ailments such as these, it is not always feasible or necessary to obtain medical records.

13. 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.

14. The Courts must distinguish between condoning the delay in miscellaneous applications or in ancillary matters and excusing delay in



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filing substantive cases or primary proceedings, such as complaint under 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.

15. The learned Magistrate, considering the reason assigned and taking note of the quantum of delay, has rightly allowed the petition and as such, the impugned order cannot be found fault with. Hence, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

16. In the result, this Criminal Revision is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

28.02.2025

NCC :yes/No
Index :yes/No
Internet:yes/No
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K.MURALI SHANKAR,J.

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To

1. The Judicial Magistrate,
Manamadurai,
Sivagangai District.

Pre-Delivery Order made in
Crl.R.C.(MD)No.1316 of 2024
and
Crl.M.P.(MD)No.13363 of 2024

Dated : 28.02.2025