

S.Kumar Vs. R.Thangaraj

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SooperKanoon Citation : sooperkanoon.com/964780

Court : Chennai

Decided On : Jan-24-2013

Judge : B.Rajendran

Appellant : S.Kumar

Respondent : R.Thangaraj

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

24. 01.2013 CORAM THE HONOURABLE MR.JUSTICE B.RAJENDRAN
Crl.R.C.No.810 of 2008 S.Kumar ... Petitioner Vs. R.Thangaraj ... Respondent
Prayer: Criminal Revision Case filed under section 397 and 401 of Criminal
Procedure Code seeking to call for the records in C.A.No.178 of 2007 on the file of
the Learned VII Addl. Sessions Judge Court, Chennai, confirming the Judgment
dated 19.07.2007 made in C.C.No.6058 of 2003, on the file of the Learned XV
M.M. G.T., Chennai and set aside the Judgment dated 05.01.2008 passed in
C.A.No.178 of 2007 on the file of the Learned VII Addl. Sessions Judge Court,
Chennai and thereby acquit the Petitioner in C.C.No.6058 of 2003 on the file of the
Learned XV M.M. G.T., Chennai. For Petitioner : M/s.P.K.Gopal Raj For
Respondent : Mr.R.Vijayaraghavan O R D E R This criminal revision is filed
seeking to call for the records in C.A.No.178 of 2007 on the file of the learned VII
Additional Sessions Judge Court, Chennai, confirming the order dated 19.07.2007
made in C.C.No.6058 of 2003, on the file of the learned XV Metropolitan
Magistrate, George Town, Chennai and set aside the Judgment dated 05.01.2008

passed in C.A.No.178 of 2007. 2.The learned XV Metropolitan Magistrate, George Town, Chennai convicted the revision petitioner for the offence punishable under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for two years and to pay a compensation of Rs.30,000/- to the respondent within a period of three months. On appeal, the learned VII Additional Sessions Judge Court, Chennai, confirmed the conviction and modified the sentence of imprisonment by reducing it to six months simple imprisonment and ordered the compensation to be paid to the respondent within a period of two months. 3.The learned counsel for the revision petitioner/ accused would only contend that the complaint before the lower court was filed belatedly, without an application for condonation of delay, hence, the complaint itself is not maintainable. 4.The learned counsel for the respondent would only contend that there was no delay and even if there is a delay, there is no need for filing application since, as per the amendment in Section 142 (3) of the Negotiable Instruments Act, if the court is satisfied with the delay it can condone the delay and even otherwise, as per the decision of the Hon'ble Apex Court, it is a curable defect. Therefore, the court below has rightly held that there is no delay in filing the complaint. He would further contend that the court below has categorically held that the complaint itself was filed within the time from the date of receipt of acknowledgment card. Therefore, the order passed by the court below need not be interfered with. 5.Heard both sides. By consent of the counsel for both the parties, the revision itself is taken up for final disposal. 6.The only point which was raised by the learned counsel for the petitioner is that there was a delay in filing the complaint. The court below has given a clear finding that the statutory notice, calling upon the accused to pay the cheque amount was issued on 15.04.2003 and it was served on the revision petitioner/ accused on 23.04.2003, which is marked as Ex.A4. As per Section 138 of the Negotiable Instruments Act, he should have filed the application on or before 08.06.2003, taking into consideration the date of service of notice on 23.04.2003 and the complaint has been filed only on 23.06.2003 before the court below. The finding of the court below is that even though the notice was served on 23.04.2003, it reached the complainant/ respondent herein only on 19.05.2003 and within the stipulated time, he has filed the complaint on 23.06.2003. Therefore, if that date is taken into consideration, it

shall be construed that the complaint was filed in time. 7. Even otherwise, if we take the original date of filing of complaint into consideration, the lower court has considered that sufficient reason has been given and the court can condone the delay, as per the provision under Section 142 (3) of the Negotiable Instruments Act. The fact remaining that acknowledgment card itself was received much later. Therefore, the reasoning given by the court below is also correct. I do not find any reason to interfere with the reasoned order of the court below.

8. In this context, it is worthwhile to refer to the decision relied on by the counsel for the respondent reported in (R. Kanthimathi and 2 others vs. Bank of India, Dharmapuri Branch, rep. by its Senior Manager, Vijayaragaran, Dharmapuri) (2007) 4 CTC 52. In which case also, this Court had an occasion to consider that there was no application to condone the delay along with the complaint and held that non-filing of an affidavit or petition to condone the delay is not a reason to quash the proceedings. It was further held that the complainant was directed to file an affidavit giving reasons for the delay in filing the complaint and the trial court was directed to expedite the disposal of the complaint on merits after giving notice to the other side. This decision was rendered by this Court following the decision of the Honourable Supreme Court reported in (State of Madhya Pradesh vs. Pradeep Kumar) 2000 (4) CTC 434. In para No. 17 and 18 of the decision, this Court held as follows:- "17. In the decision, State of Madhya Pradesh vs. Pradeep Kumar, 2000 (4) CTC 434. the Hon'ble Supreme Court of India has ruled in a Second Appeal filed under Order 41, Rule 3-A of CPC that when there is delay and the appeal is preferred without petition to condone the delay, the Court can return the memorandum of appeal as defective and the application can be filed for condonation thereafter, since such defect can be cured by the party.

18. In the light of the decisions referred by both the learned counsel, it is clear that the petition filed without an accompanying affidavit, setting out reasons for the delay, would not be sufficient to quash the proceedings initiated under Section 138 of Negotiable Instruments Act, since it is only a curable defect. Therefore, the respondent/ complainant shall file an affidavit setting out the reasons for the delay in filing the complaint and the Trial Court, thereafter shall provide opportunity to the petitioners/accused to raise their defence, by way of filing counter and if the

Court satisfies that there are adequate and cogent reasons to condone the delay, the same can be decided on merits. As it is a curable defect, I am of the considered view that the complaints cannot be quashed, as prayed for by the petitioners." 9.At this juncture, the learned counsel for the petitioner only submitted that the cheque amount was only Rs.30,000/- and in the mediation, the petitioner has paid a sum of Rs.10,000/- and hence, he may be shown some leniency in punishment. 10.Taking into consideration that the cheque amount is only Rs.30,000/- and the petitioner has already paid a sum of Rs.10,000/-, this Court is inclined to show some leniency in punishment. 11.Accordingly, the conviction is confirmed. The sentence of imprisonment is modified directing the revision petitioner to pay compensation of a sum of Rs.60,000/- to the respondent within a period of three months from the date of receipt of a copy of this order, in default to undergo simple imprisonment for a period of three months. Since, the petitioner has already paid a sum of Rs.10,000/-, the petitioner is directed to pay the balance amount of Rs.50,000/- to the respondent. In case the petitioner fails to pay the compensation within the stipulated time he has to undergo imprisonment, in such event, the period of imprisonment already undergone by him is ordered to be given set off as per the provision under Section 428 of Cr.P.C. 12.In the result, the revision is partly allowed. The conviction is confirmed. The sentence is modified to one that of payment of compensation of Rs.60,000/- to the respondent within a period of three months from the date of receipt of a copy of this order, in default to undergo simple imprisonment for a period of three months. Since, the petitioner has already paid a sum of Rs.10,000/-, the petitioner is directed to pay the balance amount of Rs.50,000/- to the respondent. In case, the petitioner fails to pay the compensation B.RAJENDRAN.J., pri within the stipulated time he has to undergo imprisonment for a period of three months and on such event, the period of imprisonment already undergone by the petitioner is ordered to be given set off as per the provision under Section 428 of Cr.P.C. 24.01.2013 Index:yes/no Internet:yes/no pri To 1.The learned VII Additional Sessions Judge Court, Chennai. 2.The learned XV Metropolitan Magistrate, George Town, Chennai. Crl.R.C.No.810 o

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