

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :: 27-04-2007

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THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Crl.O.P.Nos.6773 to 6775 of 2006

and Crl.M.P.Nos. 1723, 1725 and 1727 of 2006

R.Kanthimathi ... Petitioner in Crl.O.P.No.6773 of 2006

P.Sreenivasan ... Petitioner in Crl.O.P.No.6774 of 2006

M.Vijayakumari ... Petitioner in Crl.O.P.No.6775 of 2006

-vs-

Bank of India  
Dharmapuri Branch  
Rep. By its Senior Manager  
Vijayaragaran,  
Dharmapuri. ... Respondent in all the Crl.O.P.

Crl.O.P.No.6773 of 2006 : Criminal Original Petition filed to call for the records comprised in C.C.No.326 of 2005 on the file of the Judicial Magistrate No.I, Dharmapuri and quash the same.

Crl.O.P.No.6774 of 2006 : Criminal Original Petition filed to call for the records comprised in STC No.1577 of 2005 on the file of the Judicial Magistrate No.I, Dharmapuri and quash the same.

Crl.O.P.No.6775 of 2006 : Criminal Original Petition filed to call for the records comprised in C.C.No.285 of 2005 on the file of the Judicial Magistrate No.I, Dharmapuri and quash the same.

For petitioners : Mr.V.Ayyadurai

For respondent : Mr.M.Sathyanarayanan  
For Mr.F.B.Benjamin George

C O M M O N    O R D E R

Crl.O.P.No.6773 of 2006 has been filed under Section 482 of the Code of Criminal Procedure, seeking an order to call for the records relating to the case in C.C.No.326 of 2005 on the file of the Judicial Magistrate No.I, Dharmapuri and quash the same.

2. Crl.O.P.No.6774 of 2006 has been filed under Section 482 of the Code of Criminal Procedure, seeking an order to call for the records relating to the case in STC No.1577 of 2005 on the file of the Judicial Magistrate No.I, Dharmapuri and quash the same.

3. Crl.O.P.No.6774 of 2006 has been filed under Section 482 of the Code of Criminal Procedure, seeking an order to call for the records relating to the case in C.C.No.285 of 2005 on the file of the Judicial Magistrate No.I, Dharmapuri and quash the same.

4. It is seen from the records that the respondent herein filed similar complaints under Section 200 of Cr.P.C against the petitioners / accused for alleged offence punishable under Section 138 r/w 142 of Negotiable Instruments Act. All the three Criminal Original Petitions have been filed with similar averments against the respondent, Bank of India, Dharmapuri Branch, represented by its Senior Manager.

5. As per the complaint given by the respondent / complainant against the petitioners, the petitioners / accused are close relative of one R.Mohandas and one D.R.Rajasekaran, the partners of a firm under the name and style of M/s. D.R.Ramamoorthy & Sons, carrying on business in petroleum products at Bye-pass Road, Dharmapuri. The said firm was liable to pay the respondent bank a balance to the tune of Rs.86,00,000/- (Rupees Eighty six lakh only) in the cash-credit account maintained by the said firm and the bank was insisting on the said firm to regularize the account. The partners of the firm had obtained 6 cheques from the petitioners / accused drawn in favour of the aforesaid firm and requested the respondent bank to purchase the cheques and adjust the proceeds thereof towards part satisfaction of the dues in their cash-credit account. The respondent bank, being a holder in due course of the cheques presented the same for collection on the due dates of the cheques in the respective banks, but all the said cheques were returned by the respective drawee banks on the same day of presentation, on the ground of .Insufficiency of Funds.. Therefore, the respondent bank thereafter issued a legal notice to all the petitioners with regard to the dishonour of the respective cheques issued by them.

6. The details of three cheques issued by R.Kanthimathi, petitioner in Crl.O.P.No.6773 of 2006 are as follows :

No.	Date of Cheque	Cheque No.	Drawn on (Dharmapuri Branch)	Cheque amount
1.	28.06.2004	687553	Indian Bank	Rs.3,30,000/-
2.	30.06.2004	526316	Indian Bank	Rs.3,45,000/-
3.	06.07.2004	687554	Indian Bank	Rs.5,50,000/-

7. The details of the cheque issued by P.Sreenivasan, petitioner in Crl.O.P.No.6774 of 2006 is as follows :

No.	Date of Cheque	Cheque No.	Drawn on (Dharmapuri Branch)	Cheque amount
1.	09.02.2004	817995	Indian Bank	Rs.4,40,000/-

8. The details of two cheques issued by M.Vijayakumari, petitioner in Crl.O.P.No.6775 of 2006 are as follows :

No.	Date of Cheque	Cheque No.	Drawn on (Dharmapuri Branch)	Cheque amount
1.	17.03.2004	683915	Indian Bank	Rs.5,50,000/-
2.	18.03.2004	683916	Indian Bank	Rs.5,52,000/-

9. It is not in dispute that after the dishonour, the respondent bank issued separate legal notice to the respective petitioner, informing the dishonour of the cheques and demanding settlement of dues thereon. The complaint relating to Crl.O.P.No.6773 of 2006 was filed before the trial court with a delay of 28 days. The complaint relating to Crl.O.P.No.6774 of 2006 was filed before the trial court with a delay of 14 days. Similarly, the complaint relating to Crl.O.P.No.675 of 2005 has been filed before the trial court with a delay of 3 days. The respondent bank has prayed the trial court to condone the delay in taking criminal action against the respective petitioners, who were the drawers of the aforesaid cheques.

10. The short point involved in the criminal original petitions is whether the trial court could take cognizance of the alleged offence under Section 138 r/w 142 of Negotiable Instruments Act, by condoning the delay as stated above.

11. Mr.V.Ayyadurai, learned counsel appearing for the petitioner in all the cases would contend that there was no separate affidavit filed by the respondent / complainant seeking to condone the delay and no enquiry was conducted for condoning the delay, but

the learned Judicial Magistrate has straightaway taken cognizance of the complaint filed after the prescribed period of limitation and issued summons to the petitioners in all the cases. According to the learned counsel, the procedure followed by the trial court is not legally sustainable. Therefore, it should be construed as an abuse of process of court and accordingly, the criminal proceedings, pending before the trial court are liable to be quashed under Section 482 of the Code of Criminal Procedure. In support of his contention, the learned counsel cited the following decisions :

1. Kanhai Raut vs. Budhan Mahto, 1978 Cr1.L.J 667
2. S.V.Arjunaraja vs. P.Vasantha, 2005 (5) CTC 401
3. Pradeep vs. State of Rajasthan, 2005 Cr1.L.J. 1056
- 4.M.Muraleedharan vs. Sreeram Investment Ltd., (2006) 129 Comp Cas 465 (Ker)
- 5.Sanjay Raghuram vs. T.I.F.Ltd., (2006) 133 Comp Cas 450 (Mad)
12. Per contra, Mr.M.Sathyannarayanan, learned counsel appearing for the respondent cited the following decisions :
  1. Suresh Kumar vs. Firm Kurban Hussain Taiyab Ali, AIR 1996 MP151
  2. State of M.P. vs. Pradeep Kumar, 2000 (IV) CTC 434
  - 3.M/s. Hulash Chand Choraria vs. Union of India, AIR 2003 Gauhati 151
13. This Court in the decision, Sanjay Raghuram vs. T.I.F.Ltd., reported in (2006) 133 Comp Cas 450 (Mad), has held that the non-filing of the affidavit, stating cogent reasons for the delay to the satisfaction of the Court is a curable defect and hence, the complaints could not be quashed. As per this ruling, the complainant shall file an affidavit setting out the reasons for the delay and thereafter opportunity be given to the accused to counter their reasons assigned in the affidavit accompanied by the petition and to decide the same on merits. With the above observation, the Criminal Original Petition has been dismissed by this Court.



14. In the decision, M.Muraleedharan vs. Sreeram Investment Ltd., reported in (2006) 129 Comp Cas 465 (Ker), the Kerala High Court has held that when there is delay in filing the complaint, the application to condone delay must be made with the affidavit of the complaint to consider the application afresh and in that case, the Magistrate was directed to consider the application for condonation of delay afresh, if the applicant files his own affidavit in support of his contention.

15. In the decision, S.V.Arjunaraja vs. P.Vasantha, reported in 2005 (5) CTC 401, is not applicable for the facts and circumstances of the case, since the case referred therein relating to court fees paid after the period of limitation, in a case, filed on promissory note.

16. In the decision, Suresh Kumar vs. Firm Kurban Hussain Taiyab Ali, reported in AIR 1996 MP151, it has been held that for condonation of delay under Section 5 of Limitation Act, a formal application would not be required, if the facts presented before the Court satisfies the judicial conscience of the Court that the applicant before it was prevented for sufficient cause in bringing the proceedings well within limitation. If the Court is of the opinion that in absence of formal application the delay cannot be condoned, then it is the duty of the Court to give opportunity to the applicant before it, to move an application explaining the cause for delay and seek condonation under Section 5 of Limitation Act.

17. In the decision, State of M.P. vs. Pradeep Kumar, reported in 2000 (IV) CTC 434, the Hon.ble Supreme Court of India has ruled in a Second Appeal filed under Order 41 Rule 3-A of C.P.C, 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 reason 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 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.

19. With the above observation, the Criminal Original Petitions are dismissed. However, the petitioners are at liberty to raise all their defence that are available as per law before the trial court. Consequently, connected criminal miscellaneous petitions are also dismissed. The Court below is directed to dispose the case according to law, as early as possible.

Sd/-  
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

tsvn

To

1. The Judicial Magistrate No.I,  
Dharmapuri.

2. Do Thro The Chief Judicial Magistrate,  
Dharmapuri.

1 cc to Mr.V. Ayyadurai, Advocate, sr. 29691

1 cc to Mr.F.B. Benjamin George, Advocate, Sr. 29576

सत्यमेव जयते

Cr1.O.P..Nos.6773  
to 6775 of 2006

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