

**IN THE COURT OF XIII ADDITIONAL DISTRICT & SESSIONS
JUDGE (FTC), VIJAYAWADA**

Present: **V.S.S.Srinivasa Sarma**
Judge, Special Court for Trial and Disposal of Commercial Disputes
FAC:: XIII Additional District & Sessions Judge, Vijayawada.

Friday, this the 21st day of April, 2023

CRL.R.P.No. 117 of 2018

Between:

Y.Swarnalatha, W/o.Lakshmipathi, Hindu, Aged about 48 years,
R/o.D.No.9-60-102, Ganapathirao Road, Kothapet, Vijayawada-1.

... Revision Petitioner
(Complainant in Crl.MP.No.3931/2016 in
C.C.No...../2018)

And

1) Y.Lakshmi Tulasi, W/o.Syam Prasad, Hindu, Aged about 44 years,
Teacher, R/o.D.No.3-1, Godavarru Village, Kankipadu Mandal, Krishna
District.

... Respondent
(Accused in Crl.MP.No.3931/2016
in C.C.No...../2018)

2) Additional Public Prosecutor, Vijayawada.

... Respondent

On revision against the Order dated 09.11.2018 in Crl.M.P.No.3931/2016 in
C.C No. /2018 passed by Chief Metropolitan Magistrate, Vijayawada

Between:

Y.Swarnalatha

... Complainant

And

Y.Lakshmi Tulasi

...Accused

This Petition came up 18.04.2023 for final hearing in the presence of Sri B.Vivekananda Murthy, Advocate for Petitioner; and Sri Y.Suri Babu, Advocate for Respondent No.1; and Sri Y.Pullu Reddy, learned Additional Public Prosecutor for Respondent No.2 and upon perusing the material on record, the grounds of revision and upon hearing both sides and having stood over for consideration till this day, this Court made the following:

// ORDER //

This Revision Petition is filed against the Order dated 09.11.2018 of the Chief Metropolitan Magistrate, Vijayawada in Crl.M.P.No.3931/2016 in un-registered C.C.No. --- of 2018.

2. The petitioner Swarnalatha in this Revision Petition was the Complainant in the Un-registered case filed for the Offence under Section 138 of Negotiable Instruments Act, 1981 against the respondent Y.Lakshmi Tulasi. Such a complaint was filed with a delay of 430 days. The petitioner Swarnalatha stated that the complaint has to be filed on or before dt.23.06.2015, but the same could not be filed because of eye infection; and other ailments; as she got bed ridden and as she could not give proper instructions to the counsel. The Revision Petitioner Y.Swarnalatha contended that after an enquiry, the Trial Court had dismissed the petition under Section 142 (a) of N.I Act on 09.11.2018.

3. The petitioner Y Swarna Latha filed this Revision Petition raising the several grounds inter alia:

1. that the Order of the Trial Court is not according to law and weighing probabilities.
2. that the Trial Court had failed to appreciate provisions of Section 138, and Section 142(1b) of N.I Act in a proper perspective.
3. that the Trial Court failed to consider the reasons i.e., medical reasons set forth by the petitioner.

Ultimately the petitioner Y.Swarna Latha sought to set aside the Order and direct the Trial Court to take the complaint on file condoning the delay.

4. On notice respondent Lakshmi Tulasi made appearance.

Point for consideration ::

Whether the Trial Court Chief Metropolitan Magistrate, Vijayawada was justified in dismissing the Crl.M.P.No.3931/2016 in C.C.No...../2018 on 09.11.2018?

5. During enquiry, the petitioner Swarna Latha had argued that though the petitioner Swarna Latha had stated that as on or before 23.06.2015 she had to file the complaint but she could not file it as she suffered from eye infection and other diseases; she got bed ridden and as she was unable to give proper instructions, the Trial Court did not consider it. The Counsel had argued that the Trial Court had not applied its mind for the reasons set forth for delay in filing the complaint.

6. This Court had considered the Order of the Trial Court dt.09.11.2018. The Trial Court had considered each and every reason set forth by the petitioner Swarna Latha in seeking condonation of delay of 430 days. It had considered the Medical Certificates as well. Ultimately, it held that there was no justification to condone the delay of 430 days.

7. As seen from the record, the petitioner Swarna Latha had filed four Certificates. The first Certificate was dt.31.06.2016 issued by Dr.C.V.Subba Rao that the petitioner Y.Swarna Latha had fever intermittently since 01.11.2015 and as such, she was advised for bed rest during the said period and she was fit to resume duties from 01.02.2016. The second Certificate was issued by Dr.V.Santha Kumari that the petition Swarna Latha underwent Excision Biopsy of left Breast Lump on 26.03.2016 on general anesthesia. It was an undated Certificate. The third Certificate was dt.24.07.2016 issued by Dr.S.V.Ramana Rao that the petition Swarna Latha was advised for bed rest for four months i.e., from 15.06.2015 to 15.10.2015. The last Certificate was issued by Dr.S.V.Ramana Rao on 24.07.2016 that the Petitioner Y.Swarna Latha had complicated Malaria with gross anemia and she was advised for bed rest for a period of 3 ½ months i.e., from 01.04.2016 to 20.07.2016.

8. According to the petitioner Swarna latha the complaint under Section 138 of Negotiable Instruments Act 1881 has to be filed on or before 23.06.2015. Even if the Medical Certificates are true and correct, Initially she was advised to rest from 15.06.2015 to 15.10.2015. The first Certificate stated that she was advised to take rest since 01.11.2015 and it noted that it related to the above period but the period was not mentioned and therefore probably presumed that it was till 31.01.2016 when the Certificate was issued. The Certificate about operation was undated, but it noted as if the operation was on 26.03.2016. Again the Certificate stated that she advised for bed rest from 01.04.2016 to 20.07.2016. Thus, it is evident that the petitioner/complainant had opportunity of filing complaint during the interregnum period. The complaint was filed on 21.02.2017. The Trial Court had considered properly and it had dismissed.

9. As seen, during enquiry of this Revision Petition counsel for the petitioner had relied upon following Judgments:

1. K.S.Joseph Vs. Philips Carbon Black Limited and another AIR 2016 SC 2149
2. Birendra Prasad Sah Vs. State of Bihar and another (2019) 7 Supreme Court Cases 273
3. MSR Leathers Vs. S.Palaniappan and another (2013) 1 Supreme Court cases 177
4. Maiben Devraj Shah Vs. Municipal Corporation of Brihan Mumbai AIR 2012 Supreme Court 1629

10. This Court had considered each and every Judgment. Infact except the first Judgment, other Judgments have no relevancy to Section 142 of Negotiable Instruments Act. It is a fact that the Court should not be too technical in application of law while dispensing justice. But it should be noted that the petitioner Swarna Latha ought to have approached the Court with clean hands. The Certificates dt.24.07.2016 were issued for the period from 15.06.2015 to 15.10.2015 and from 01.04.2016 to 20.07.2016 on the same date and it seems that the Certificates brought for the purpose of saving limitation or aiding in condonation of delay. The Certificate

dt.31.01.2016 did not state about the period of treatment or illness. Undated Certificate shows that the operation was on 26.03.2016. Therefore, this Court is also on the opinion that the petitioner Y.Swarna Latha had not set forth justified grounds in condoning the abnormal delay of 430 days. Thus, the Revision Petition is liable to be dismissed.

Result:

11. In the result, the Revision Petition is dismissed.

Dictated to the Stenographer, transcribed by her, corrected and pronounced by me in open court, this the 21st day of April, 2023.

Sd/- V.S.S.Srinivasa Sarma
Judge, Special Court for Trail and Disposal of
Commercial Disputes, Vijayawada
FAC : XIII Additional District Judge
Vijayawada

To
The Chief Metropolitan Magistrate,
Vijayawada.