

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 21ST DAY OF AUGUST 2013

BEFORE

THE HON'BLE MR.JUSTICE N.ANANDA

CRIMINAL REVISION PETITION No.311 OF 2010

Between:

Smt.H.Rathnamma,
W/o Sri Venkatesh,
Aged about 45 years,
R/o No.K-19, Adugodi,
Police Line,
Bangalore – 560 030.

... Petitioner

(By Sri G.Sukumaran, Advocate)

And:

Smt.Lakshmamamma,
W/o Sri Chikkarudraiah,
Aged about 48 years,
R/o No.14, Basavana Beedi,
Audugodi,
Bangalore – 560 034.

... Respondent

(By Sri K.Adhinav Anand, Advocate)

This CrI.R.P. is filed U/S 397 and 401 Cr.P.C. praying that this Hon'ble Court may be pleased to set aside the order date 7.12.2006 in C.C.No.8443/2004 on the file of the learned XX-Addl., CMM and XXII ASCJ, Bangalore City and in CrI.Apl.No.346/2009, dated 6.1.2010 passed in the PrI.City Civil and S.J, Bangalore, acquitted of the offences U/S 138 of the N.I Act.

This petition, coming on for orders, this day, the Court made the following:

O R D E R

The petitioner was convicted for an offence punishable under Section 138 of Negotiable Instruments Act in C.C.8443/2004 on the file of the XX Additional ACMM & XXII ASCJ at Bangalore. The petitioner filed Criminal Appeal No.346/2009 on the file of the Principal City Civil and Sessions Judge Court at Bangalore.

2. There was inordinate delay of 838 days in filing the appeal. The application filed under Section 5 of the Limitation Act and the annexed affidavit do not constitute sufficient cause to condone the delay of 838 days. In a decision reported in **(2011) 4 SCC 363 (LANKA VENKATESWARLU (DEAD) BY LRs. Vs. STATE OF ANDHRA PRADESH AND OTHERS)**, the Supreme Court has held:

“28. We are at a loss to fathom any logic or rationale, which could have impelled the High Court to condone the delay after holding the same to be unjustifiable. The concepts such as “liberal

approach”, “justice oriented approach”, “substantial justice” cannot be employed to jettison the substantial law of limitation. Especially, in cases where the court concludes that there is no justification for the delay. In our opinion, the approach adopted by the High Court tends to show the absence of judicial balance and restraint, which a Judge is required to maintain whilst adjudicating any lis between the parties. We are rather pained to notice that in this case, not being satisfied with the use of mere intemperate language, the High Court resorted to blatant sarcasms.

29. The use of unduly strong intemperate or extravagant language in a judgment has been repeatedly disapproved by this Court in a number of cases. Whilst considering applications for condonation of delay under Section 5 of the Limitation Act, the courts do not enjoy unlimited and unbridled discretionary powers. All discretionary powers, especially judicial powers, have to be exercised within reasonable bounds, known to the law. The discretion has to be exercised in a systematic manner informed by reasons. Whims or fancies; prejudices or predilections cannot and should not form the basis of exercising discretionary powers.”

3. The petitioner has failed to establish sufficient cause to condone delay of 838 days in preferring the appeal. Therefore, the learned trial judge of the first appellate court has dismissed the application for condonation of delay and the appeal.

4. There are no reasons to interfere with the impugned order. The petition is dismissed.

Sd/-
JUDGE

Cm/-