

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12-10-2015

Coram

THE HON'BLE MR. JUSTICE B. RAJENDRAN

CrI.R.C. No. 458 of 2014

S.Siva

.. Petitioner

Versus

The State by
Inspector of Police
S.10 Pallikaranai Police Station
Pallikaranai
Chennai-100
Cr.No.1824 of 2007

.. Respondent

Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order dated 06.03.2014 passed in C.M.P.No.3774 of 2013 in Un.No.SR (CRP) No.3655 of 2013 on the file of the Principal Sessions Judge, Chengalpattu.

For Petitioner : No Appearance
of Party-in-person

For Respondent : Mr.Mohamed Riyaz
Government Advocate
(Criminal Side)

ORDER

The petitioner/party-in-person has come forward with this Criminal Revision Case aggrieved against the dismissal order dated 06.03.2014 passed in C.M.P.No.3774 of 2013 in Un.No.SR (CRP) No.3655 of 2013 on the file of the Principal Sessions Judge, Chengalpattu, which was filed to condone the delay of 841 days in filing the Criminal Revision Petition.

2. Since, the petitioner appears as party-in-person, in order to give him sufficient opportunity, the matter was adjourned on several occasions, but, inspite of time granted continuously on 06.08.2015, 20.08.2015 and 07.09.2015, 28.09.2015 and 06.10.2015, there was no representation for the petitioner. Today, though, the matter was listed under the caption "for dismissal", when the matter is taken up, there is no representation for the petitioner/party-in-person. The Hon'ble Apex Court in the decision reported in (2013)3 Supreme Court Cases 721, K.S.Panduranga vs. State of Karnataka, has culled out certain principles and in paragraph No.19 has held as follows:-

"19. From the aforesaid decision in Bani Singh vs. State of Uttar Pradesh, reported in (1996) 4 SCC 720, the principles that can be culled out are:

19.1. That the High Court cannot dismiss an appeal for non-prosecution simpliciter without examining the merits;

19.2. That the Court is not bound to adjourn the matter if both the appellant or his counsel/lawyer are absent;

19.3. That the court may, as a matter of prudence or indulgence, adjourn the matter but it is not bound to do so;

19.4. That it can dispose of the appeal after perusing the record and judgment of the trial court;

19.5. That if the accused is in jail and cannot, on his own, come to court, it would be advisable to adjourn the case and fix another date to facilitate the appearance of the appellant-accused if his lawyer is not present, and if the lawyer is absent and the court deems it appropriate to appoint a lawyer at the State expense to assist it, nothing in law would preclude the court from doing so; and

19.6. That if the case is decided on merits in the absence of the appellant, the higher court can remedy the situation."

In the light of the principles culled out in the judgment of the Hon'ble Apex Court cited supra, it is crystal clear that no doubt, the Court can decide the matter even in the absence of petitioner or his counsel, but, only criteria is that the case should be decided on merits in the absence of the petitioner and the Court cannot dismiss an appeal for non-prosecution simpliciter without examining the case on merits. In the light of the decision cited supra, the main Criminal Revision Case itself is taken up and disposed of on merits, after hearing the learned Government Advocate (Criminal Side) and also after perusing the materials available on record.

3. On a perusal of the order of the Lower Court, it is seen that the petitioner is the husband and the only reason stated by him for the delay of 841 days in filing the Criminal Revision Petition was that he went to Siddha Medical Hospital for taking treatment for ovamai and ammai from 01.06.2012 to 06.06.2013 and hence, he could not appear before the Judicial Magistrate Court, Alandur, to receive the order copy. Infact, he has not produced any documents to prove the same. The only document, which has been produced by the petitioner is the Out-Patient Chit of the Siddha Medical Hospital, but, that is available only for particular dates. Even this document, he has not marked it and he has not examined anybody, apart from that, there is no

valid reason stated for the delay. When the petitioner has not even chosen to receive the order copy, I do not find any reason to interfere with the reasoned order of the Lower Court and the order passed by the Lower Court on 06.03.2014 stands confirmed. This Criminal Revision Case is dismissed.

Sd/-
Assistant Registrar(CS VI)

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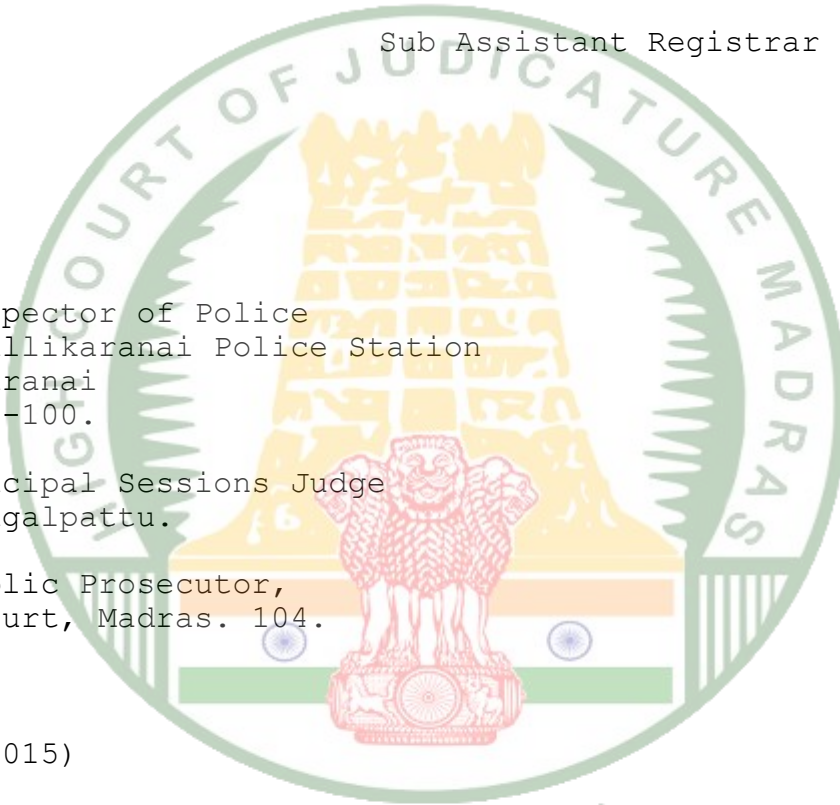
Sub Assistant Registrar

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To

- 1.The Inspector of Police
S.10 Pallikaranai Police Station
Pallikaranai
Chennai-100.
- 2.The Principal Sessions Judge
at Chengalpattu.
3. The Public Prosecutor,
High Court, Madras. 104.

SV(CO)
EU(17/11/2015)



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