

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2015

CORAM

THE HONOURABLE MR. JUSTICE S.MANIKUMAR

Crl.R.C.No.172 of 2015

P.V.Mammu Haji

... Petitioners

vs.

1. V.K.Abdulla (died)
2. V.K.Rabi
3. Shoukat
4. Salina
5. Karim
6. State Rep. by
Public Prosecutor,
Pondicherry

... Respondents

PRAYER: Criminal Revision filed under sections 397 and 401 of Criminal Procedure Code to call for the records pertaining to the order passed in Cr.M.P.No.606 of 2012 in unnumbered Crl.Appeal No.-- of 2012 dated 10.04.2013 on the file of the learned Principal Sessions Judge, Puducherry.

For Petitioners : Mr.R.Natarajan
For Respondents : Mr.Thangavel
Additional Public Prosecutor (Pondy)

O R D E R

Criminal Revision Case is directed against the order in Cr.M.P.No.606 of 2012 in an unnumbered Crl.Appeal No.-- of 2012 dated 10.04.2013, on the file of the learned Principal Sessions Judge, Puducherry, The order reads as follows:

"This is a petition filed under Section 5 of the Limitation Act to condone the delay of 30 days in representing the appeal.

Petitioner called absent. Batta not paid. Hence, petition is dismissed for default."

2. Earlier, at the stage of condone delay, in filing the Criminal Revision Case in M.P.No.1 of 2015 in CrI.RC.SR.No.3248 of 2015, by inviting the attention of this Court to the receipt dated 02.08.2013, Mr.R.Natarajan, learned counsel for the petitioner submitted that a sum of Rs.1,00,000/- representing the cheque amount, subject matter in C.C.No.67 of 2002, on the file of the learned Judicial Magistrate, Mahe, Puducherry, has been paid to the legal representatives of the deceased, to whom the cheque was issued. The deceased was the complainant in C.C.No.67 of 2002 on the file of the learned Judicial Magistrate, Mahe. He also submitted that in the unnumbered criminal Appeal, all the legal representatives of the drawee (since deceased) have been impleaded, as party respondents. Receipt stated to have been filed before the learned learned Principal Sessions Judge, Puducherry, is extracted hereunder.

"RECEIPT

We, (1) V.K.Rabi, (2) U.K.Shoukathai (3) Salina and (4) U.K.Abdul Kareem, wife and children of Late V.K.Abdulla, Complainant in C.C.No.67 of 2002 on the file of Hon'ble Judicial Magistrate Court, Mahe, have received the cheque amount of Rs.1,00,000/- (Rupees One Lakh only) from P.V.Mammu Haji, accused in the abovesaid case in terms of settlement of the case."

3. Earlier when M.P.No.1 of 2015 in CrI.R.C.SR.No.3248 of 2015, came up for hearing, notice was ordered in the condonation petition on 02.02.2015, returnable by 23.02.2015. Private notice was also permitted. Upon service of the notice, name of the respondents 2 and 4 therein, were shown in the cause list. Respondent No.6 therein, was represented by the learned Additional Public Prosecutor, Puducherry. It was further recorded that in respect of Respondent No.5, the postal endorsement read that "party has left India". In so far as Respondent No.3 therein is concerned, postal endorsement read that 'Left and present address not known'.

4. Thus, having regard to the right of an accused to challenge conviction and taking note of the receipt dated 02.08.2013, said to have been issued by the legal representatives of the deceased/complainant, this Court, in M.P.No.1 of 2015, condoned the delay of 551 days in filing the Criminal Revision Case.

5. Now the order impugned in this revision is the dismissal of Criminal Cr.M.P.No.606 of 2012 in an unnumbered CrI.Appeal No.-- of 2012 dated 10.04.2013, filed to condone the delay of 30 days in representing the appeal.

6. Considering the limited scope, this Court deems it fit to consider a decision made in the General Manager, Heavy Vehicles Factory, Avadi, Madras and another Vs. T.Shadrak, reported in 1978 TLNJ 332, wherein at paragraph No.8, this Court held as follows:

"8. I may point out in this context the difference between the condonation of delay in the proper presentation of a particular proceeding pursuant to S.5 of the Limitation Act and the condonation of delay in the representation of a particular proceeding obviously under the inherent powers of the Court under S.151, C.P.C. In the former case, there is a specific provision in the statute, namely, the Limitation Act, which imposes an obligation on the court itself suo motu to reject a proceeding if it is barred by limitation. That strictness is not available or applicable to a case of a delay in the representation of the proceeding in question. Consequently, the provisions and considerations applicable to excusing the delay under S.5 of the Limitation Act will not apply to the question of excusing the delay in representing the papers and therefore, the considerations relevant to excusing the delay with reference to petitions, disposable under the Limitation Act, will bear no analogy to those relevant to a decision of the question in the present controversy. When Mr.K.N.Balasubramanian relied on S.148, C.P.C., I asked him to bring to my notice any decision of any court holding that when delay in the re-presentation of papers is excused by a court, that power is exercised only under S.148, C.P.C. so as to justify the party who opposed the condonation of the delay taking up the matter in revision. The learned counsel frankly conceded that he is not able to put his finger on any such decision. Under these circumstances, I have proceeded on broad considerations, and in particular with reference to the distinction between the delay in the presentation of a proceeding and the delay in the representation of the papers with reference thereto. In view of the basic difference between the two, I am of the opinion that the considerations relevant to the former will not apply to the delay in representing the papers in any proceeding, whether it be a suit, a civil revision petition, a first appeal or a second appeal in any court, notice to the respondent in the main case is not necessary, and even if such notice is given to the respondent and he is heard, and overruling his objection the delay is condoned, he cannot be said to have been aggrieved in the sense of there being a judicial determination against him so as to entitle him to approach

the High Court under S.115 C.P.C. In view of this, I hold that this petition is not maintainable and reject the same."

7. Though, notice has been ordered in the present Criminal Revision Case i.e., CrI.R.C.No.172 of 2015, in the light of the decision in T.Shadrak's case, this Court is of the view that there is no need to wait for service, to be effected on the respondents. Court has powers to condone the delay in representation, even without ordering notice to the respondents. It is true that this Court has ordered notice to the respondent. But at that time, attention of this Court was not invited to the decision in T.Shadrak's case, stated supra.

8. 7. On the facts and circumstances of this case, it could also be noticed that it was only a delay of 30 days in representing the appeal, filed against conviction and sentence imposed on the petitioner, and the learned Principal Sessions Judge, Puducherry, himself could have condoned by exercising his discretion, considering the fact that the petitioner has been convicted in C.C.No.67 of 2002 on the file of the learned Judicial Magistrate, Mahe. Right to file an appeal against conviction is statutory. With due respect, the learned Principal Sessions Judge, Puducherry, ought not to have been too technical in dismissing the petition, filed under Section 5 of the Limitation Act to condone the delay of 30 days in representing the appeal.

9. In the light of the decision in T.Shadrak's case and for the reasons stated supra, order impugned in Cr.M.P.No.606 of 2012 in an unnumbered CrI.Appeal No.-- of 2012 dated 10.04.2013 on the file of the learned Principal Sessions Judge, Puducherry, is set aside. Unnumbered appeal has to be processed and posted for hearing. Learned Principal Sessions Judge, Puducherry, is directed to fix a date for hearing of the appeal.

10. With the above directions, the criminal revision case is allowed.

Sd/-

Assistant Registrar(CS III)

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Sub Assistant Registrar

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To

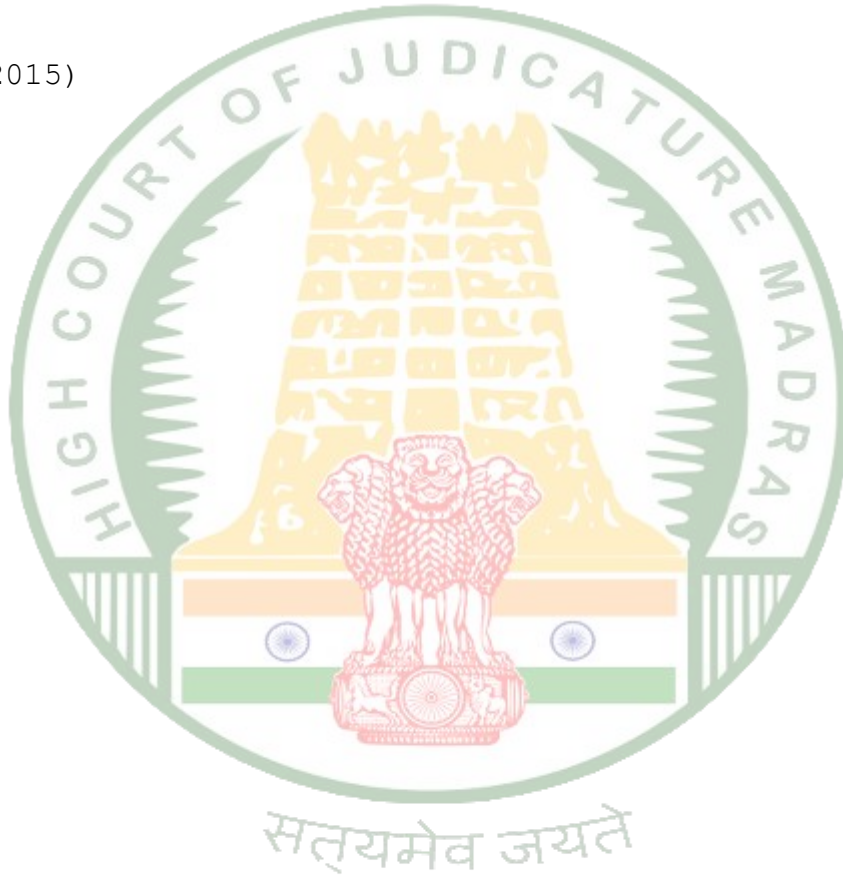
1. The Principal Sessions Judge, Puducherry.

2. The Public Prosecutor, Pondicherry

+1cc to M/s.R.Natarajan, Advocate, S.R.No.17056

Cr1.R.C.No.172 of 2015

RSK (CO)
CA(10/04/2015)



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