

THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

Criminal Revision Case No. 388 of 2013

Order:

This Criminal Revision Case is directed against the orders, dated 21.08.2012, passed in CrI.M.P No.460 of 2011 in Criminal Appeal(SR) No.555 of 2011 by the learned Principal District and Sessions Judge, Srikakulam.

The facts giving rise to the present revision case are as under. The revision petitioner herein is the *de facto* complainant. On the basis of his complaint, a case in Crime No.10 of 2006 was registered under Sections 447 and 427 read with 34 IPC against the respondents 1 to 3 herein. Charge sheet was filed on the file of the Additional Judicial Magistrate of First Class, Sompeta, and it was registered as CC No.561 of 2007. After full fledged trial, the learned Magistrate found the accused not guilty of the charges and by judgment, dated 03.01.2011, acquitted the respondents/accused. Aggrieved by the said acquittal, the *de facto* complainant/revision petitioner has filed an appeal before the Principal District and Sessions Judge, Srikakulam, and since there is delay of 43 days in filing the same, he filed CrI.M.P No.460 of 2011 seeking to condone the said delay. The learned Sessions Judge, having found that inconsistent stand has been taken by the revision petitioner in explaining the delay, has dismissed the petition. Aggrieved by the same, the present revision case is filed.

It is the contention of the learned counsel for the petitioner that at the relevant time the mother of the petitioner was suffering from diabetes and other ailments at Chandigarh and ultimately in the month of December she died at Chandigarh and, hence, he could not pursue the legal remedy available to him to prefer the appeal within the statutory period.

On the other hand, learned counsel for the respondents/accused submitted that absolutely no grounds were made out to condone the delay in filing the appeal

and there are no grounds to interfere with the impugned order passed by the lower appellate Court.

A perusal of the record shows that the *de facto* complainant has preferred the appeal with a delay of 43 days. His explanation is satisfactory. It is the contention of the revision petitioner that from January till December his mother was sick at Chandigarh and consequently he had to attend on her. In the circumstances, the delay of 43 days cannot be said to be abnormal. By way of amendment of the Code of Criminal Procedure, a right of appeal is provided to the *de facto* complainants/victims and such a statutory conferred right cannot be denied to a dissatisfied victim only on the ground that there is delay of 43 days in preferring the appeal. Therefore, I feel that the ends of justice would demand that the delay can be condoned subject to certain terms.

Accordingly, the Criminal Revision Case is allowed. Consequently, the impugned order is set aside and the delay of 43 days in filing the appeal is condoned on condition of the revision petitioner depositing costs of Rs.1,000/- (Rupees One Thousand only) to the credit of the District Legal Services Authority, Srikakulam, within a period of two weeks from the date of receipt of a copy of this order. On payment of such costs, the learned Sessions Judge is directed to take the appeal on file and dispose of the same in accordance with law.

As a sequel thereto, the miscellaneous petitions, if any, pending in the Criminal Revision Case shall stand closed.

M.S.K. JAISWAL, J.

Date: 10.06.2015

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