

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.4580 of 2016

ORDER:

This Criminal Petition is filed under Section 482 Cr.P.C. to quash the order dated 20.07.2015 in CrI.M.P. No.284 of 2014 in unnumbered Criminal Revision Petition of 2015 on the file of the Sessions Judge, Krishna District at Machilipatnam.

2. It is the case of the petitioner that he filed a complaint before the Judicial Magistrate of First Class, Gudivada, which was registered as C.C. No.196 of 2012 of 2013 and the same was dismissed on 31.12.2013 for default for non-payment of batta and questioning the said dismissal order, he preferred a revision petition before the Sessions Judge, Krishna District at Machilipatnam, along with a petition in CrI.M.P. No.284 of 2014 for condoning the delay and the revisional court ordered notice to respondent No.1, but the notice was awaiting against respondent No.1 and, therefore, the revisional court dismissed the said delay condonation petition.

3. Learned counsel for the petitioner contended that notice was ordered to respondent No.1 and the same was served through registered post with acknowledgement due and proof of service is also filed before this Court on 02.04.2016, but none appeared despite service of notice on respondent No.1.

4. It is the case of the petitioner that he could not pay process fee for service of notice on respondent No.1, as the father of his counsel

before the trial Court died during that month. But the trial Court dismissed the complaint for non-payment of process by exercising power under Section 256 Cr.P.C. However, this Court cannot decide the legality of the order passed by the trial Court, since the impugned order was passed by the Revisional Court. The Revisional Court dismissed the petition filed for condonation of the delay, while observing that the notice of respondent No.1 was awaiting, dismissed the petition filed for condonation of delay, as the petitioner did not pay process fee. The order passed by the Revisional Court itself speaks that the petitioner paid process fee for service of notice on respondent No.1 and the notice was not yet returned and it was awaiting, but the Revisional Court, while observing that the batta was not paid for service of notice on respondent No.1, dismissed the delay condonation petition for default. This order is illegal and the same is liable to be set aside.

5. Therefore, this Criminal Petition is allowed setting aside the order dated 20.07.2015 in Crl.M.P. No.284 of 2014 in an unnumbered Criminal Revision Petition of 2015 on the file of the Sessions Judge, Krishna District at Machilipatnam, and the Sessions Judge, Krishna District at Machilipatnam is directed to restore Crl.M.P. No.284 of 2014 and decide the matter afresh in accordance with law. As a sequel thereto, miscellaneous petitions, if any pending in this petition, shall stand closed.

M.SATYANARAYANA MURTHY, J.

Date: 13-12-2016

siva