

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.06.2017

Coram

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.R.C.No.1318 of 2016

&

Crl.M.P.No.11872 of 2016

A. Parameswaran

... Petitioner

Vs.

1. G.Muthukumarasamy

2. The State

Represented by Inspector of Police,
Thittacherry Police Station,
Represented by the Public Prosecutor
Nagapattinam.

3. Nataraja Mudaliar

4. Palanivel

5. Ezhilan

6. Kasthuri

... Respondents

Prayer: Criminal Revision Petition filed under Section 397 and 401 of the Code of Criminal Procedure challenging the order dated 17.06.2016 in Cr.M.P.No.959 of 2013 in Unfiled Crl.R.P. On the file of the Principal District and Sessions Court, Nagapattinam.

For Petitioner

: Mr.Sarath Chandran
for V.Raghavachari

For Respondents
1 & 3 to 6

: M/s.R.Shase
Legal Aid Counsel

For respondent No.2

: Mr.R.Ravichandran,
Government Advocate (Crl.side)

ORDER

Challenging the order, condoning the delay of 349 days in filing the revision, the present criminal revision has been filed.

2. The first respondent herein has given a complaint against the petitioner and others alleging that he is the owner of the property in Survey No.95/1 in AgarakonThai village in Nagapattinam Taluk measuring an extent of 28 cents, which was originally purchased by his wife, who, later on, settled the property in his favour by way of settlement deed. Whiles, one Kasthuri/R6 fraudulently sold the above property to the revision petitioner. Based on the said complaint, a case in Crime No.148 of 2010, was registered for the offences under sections 468, 471 & 420 of IPC and after investigation, the above complaint was closed as 'Mistake of Fact', and a negative final report has also been filed. Challenging the same, the first respondent filed a protest petition before the learned Judicial Magistrate No.II, Nagapattinam and the learned Judicial Magistrate by an order dated 06.02.2012 dismissed the protest petition. Challenging the order, dismissing the protest petition, the first respondent filed a revision before the court below with a delay of 349 days along with an application to condone the above said delay. The first revisional Court allowed the application thereby condoning the delay on payment of cost Rs.1500/- to the respondents. Challenging the same, the first respondent therein is before this court with the present revision petition.

3. Eventhough notice was served on the respondents 1 and 3 to 6, and their names were also printed in the cause list, none of them appeared either in person or through a counsel. In the above circumstances, M/s.Shase, Advocate is appointed as a Legal Aid Counsel.

4. I have heard Mr.Sarath Chandran, learned counsel appearing for the petitioner and M/s.Shase, legal aid counsel appearing for the respondents 1, 3 to 6 and perused the materials available on records carefully.

5. The learned counsel for the petitioner would submit that the respondent has not made out a case to condone the delay of 349 days. The learned counsel appearing for the petitioner would further submit that absolutely there is no valid reason for condoning the delay of 349 days. The only reason given by the petitioner for condoning such huge delay of 349 days is that he was suffering from heart ailment and that he was not able to contact his lawyer so as to instruct him to file a revision case.

6. Per contra the learned counsel appearing for the respondent would contend that once the Court below condoned the delay normally the revision Court will not interfere in the order condoning the delay as the court below has passed such order exercising its discretion and considering the reasonable cause shown by the first respondent.

7. I have considered the rival submissions and perused the materials available on record carefully.

8. In the affidavit filed in support of the petition to condone the delay the first respondent averred that he was suffering from heart ailment and was taking treatment. Apart from that he has not stated anything regarding his illness, as to where he had taken treatment and the period during which he had taken treatment. He has also not filed any material in support of his claim. But, the Court below, condoned the delay by stating that the revision petitioner has failed to establish that the first respondent herein was not suffering from heart ailment. Eventhough each and everyday delay need not be explained, in the instant case, the reason for the delay stated by the first respondent did not reflect his bonafideness and the same is not convincing, and it is not sufficient to condone the delay of 349 days. Therefore, the Court below was not right in exercising its discretion to condone the delay and it required interference at the hands of the Court.

9. In the result, the Criminal Revision Case is allowed and the order of the Court below is set aside. Consequently connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

सत्यमेव जयते
Sub Assistant Registrar

aav/ mrp

To

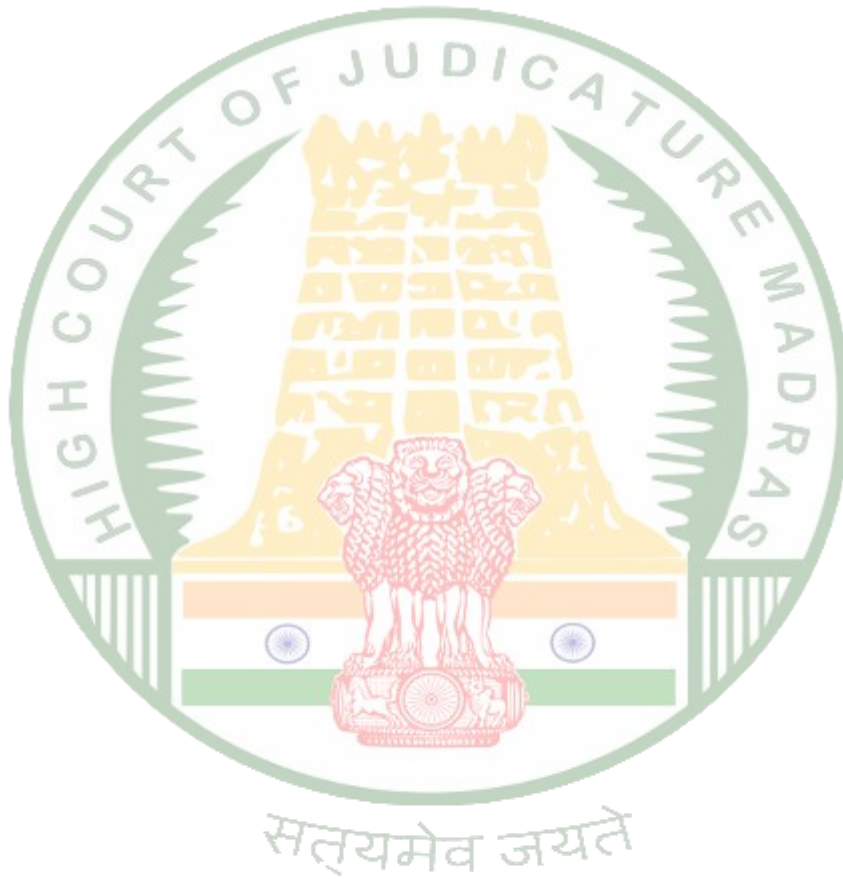
1. The Principal District and Sessions Judge,
Nagapattinam.
2. The Inspector of Police,
Thittacherry Police Station,
Nagapattinam.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.44468

Crl.R.C.No.1318 of 2016

RR(CO)
CA(13/11/2017)



WEB COPY