



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.07.2017

CORAM :

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

CrlR.C.(MD) No.380 of 2017

and

Crl.M.P(MD)No.3692 of 2017

Rajkumar

... Petitioner

Vs.

The State
rep.by the Inspector of Police,
District Crime Branch,
Nagercoil,
Crime No.15/2000.

... Respondent

Petition filed under Sections 397 read with 401 Cr.P.C, to call for the records relating to Crl.M.P.No.2096 of 2014 in C.A.SR.No.29180 of 2013 dated 22.09.2016 on the file of the Principal District and Sessions Court, Kanyakumari at Nagercoil and set aside the order dated 07.10.2016.

For Petitioner : Mr.D.Srinivasaragavan

For Respondent : Mr.C.Mayilvahana Rajendran
Additional Public Prosecutor

ORDER

This Criminal Revision Case has been filed against the order passed in the petition filed for condoning the delay, in filing an appeal against the order of acquittal.

2.The petitioner is the third accused in C.C.No.132 of 2005 on the file of the Judicial Magistrate Court, No.II, Kuzhithurai. The petitioner along with three persons stood charged for the offences under Sections 465, 471, 420 and 120(b) IPC. The trial Court, by the Judgment dated 02.11.2012 acquitted all the accused. Challenging the order of acquittal, the respondent State filed an appeal with a delay of 212 days. The Court below has passed the following order on 08.09.2016.

"Petition allowed on payment of cost Rs.1,000/- to the TN State Legal Services Authority on or before 21.09.2016, failing which, this petition to be dismissed. Call on 22.09.2016."



The respondent herein has failed to pay the amount before 21.09.2016, but paid the amount on 07.10.2016. Subsequently, the Court below has allowed the application. Challenging the same, the present Revision Case has been filed.

3. Admittedly, by the order dated 08.09.2016, the Court below directed the respondent herein to pay cost on or before 21.09.2016, failing which, the petition will be dismissed. Since the amount has not been paid on or before 21.09.2016, the order itself is worked out and the petition stands dismissed on that date. Thereafter, on 22.09.2016, time has been extended till 07.10.2016 to pay the amount and thereafter, the respondent has paid the amount on 07.10.2016 and the Court below has allowed the petition.

4. Once the order is worked out and the petition stands dismissed on 21.09.2016, the Magistrate has become *functus officio* and he has no power to extend the time for compliance and thereafter, to allow the petition. Hence, the order passed by the Court below is erroneous and the same is liable to be set aside.

5. In fine, this Criminal Revision Case is allowed. The order dated 07.10.2016 passed by the Court below is set aside. However, liberty is given to the respondent to approach the proper forum, if they so advised. Consequently, CrI.M.P(MD)No.3692 of 2017 is closed.

Sd/-

Assistant Registrar(AD-II)

/True copy/

Sub Assistant Registrar

To

1. The Principal District and Sessions Court,
Kanyakumari at Nagercoil.

2. The Inspector of Police,
District Crime Branch, Nagercoil.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 cc to Mr.D.Srinivasaragavan , Advocate in SR.No. 64052

mj

AE/MR KKR/SAR1/17.07.2017/2P/5C