

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.2409 OF 2017

ORDER:

This criminal revision is filed under Sections 397 and 401 IPC questioning the propriety, legality and correctness of the order dated 18.07.2017 in CrI.M.P.No.16 of 2016 passed by the Principal Sessions Judge, Kurnool dismissing the application filed under Rule 127 of Criminal Rules of Practice to condone the delay of 431 days in filing appeal challenging the confiscation order dated 19.08.2014 in C.C.No.592 of 2014 passed by the Judicial Magistrate of First Class, Kurnool.

The reason for the delay was that the 1st petitioner was suffering from ill-health and thereby could not contact the counsel to prefer an appeal. Therefore, there is a delay of 431 days in preferring the appeal. The Sessions Court upon hearing the arguments of both the counsel dismissed the petition holding that the petitioners failed to explain the reason for condonation of delay. The petitioners filed the present revision mainly on the ground that the 1st petitioner was suffering from ill-health and considering the ill-health, the appellate Court ought to have accepted the reason assigned by the petitioner for her inability to prefer an appeal but the appellate Court committed a serious error in dismissing the application.

When the matter reached for hearing, learned counsel for the petitioner did not appear and advance argument, but this Court cannot dismiss the revision for default, however this Court can decide the revision on merits in view of the law declared in “**Nisha**

Sharma and others v. Vinod Kumar Sharma¹ wherein it is made clear that the revision cannot be dismissed for default even the petitioner or his advocate did not appear before the Court and the Court shall examine the record and decide the revision on merits.

As seen from the material on record, allegations made in CrI.M.P.No.16 of 2016 are that the reason for failure of the petitioner to file an appeal is that one Nakka Ramesh-1st petitioner was not feeling well and suffering from ill-health thereby could not contact the counsel to prefer an appeal within the time prescribed. The petitioners did not disclose the nature of illness for such prolonged period of 431 days. Except making bald allegation that 1st petitioner was not feeling well and suffering from ill-health, no details for such prolonged illness was disclosed and more particularly the date of regaining normal health to file an appeal etc.

While considering the similar reason for condonation of delay, the Court below relied on the decision of the Supreme Court in **D.Gopinathan Pillai v. State of Kerala**², wherein it was held that when mandatory provision is not complied and when the delay is not properly, satisfactorily and convincingly explained, the Court cannot condone the delay, only on the sympathetic ground. Here, in this case, except making bald allegation of suffering from prolonged illness for 431 days, the petitioners did not produce any material in support of such contention but in the revision a different story is invented that the petitioners were migrated to

¹ 1990 Cri.L.J. NOC 57 (Delhi)

² AID 2007 (SC) 2624

Guntur and suffered from illness thereby could not prefer an appeal. Even assuming that the 1st petitioner suffered from illness for such a long period, no one is prevented the 2nd petitioner, who was not suffering from any infirmity to contact the counsel to file an appeal against the judgment but no explanation was offered for not preferring an appeal by 2nd petitioner. In the absence of any material to substantiate the said contention of suffering from prolonged illness for 431 days, dismissing the application by the Court below is justified.

Hence, I find that the ground urged in the petition is not sufficient cause which is not beyond the control of the petitioners. Therefore, the order passed by the Court below does not call for interference by this Court while exercising power under Sections 397 and 401 Cr.P.C. The criminal petition is devoid of merit and it is liable to be dismissed.

In the result, the Criminal Revision Petition is dismissed.

Miscellaneous petitions, pending if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 08.09.2017

ssp