

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.1792 OF 2017

ORDER:

This criminal revision is filed under Sections 397 and 401 Cr.P.C. questioning the propriety and legality of the order dated 23.03.2017 in CrI.M.P.No.1374 of 2016, dismissing the petition filed under Section 127 of Criminal Rules of Practice to condone delay of 158 days in preferring the appeal aggrieved by the judgment of the trial Court, acquitting the accused in C.C.No.142 of 2013 passed by the Special Judicial Magistrate of First Class (Excise), Karimnagar, on the ground that the petitioner was suffering from several old age ailments and Dengue fever for the last five months, he could not prefer an appeal within time. Therefore, sought to condone delay of 158 days in filing the petition.

On receipt of the notice, respondent filed a counter opposing the petition denying the alleged ill-health of the petitioner and also contended that some civil cases are pending between them and to bring pressure on them to come to a settlement, the petitioner filed criminal cases and now trying to file an appeal and prayed to dismiss the petition.

Upon hearing both the counsel, the trial Court dismissed the petition holding that the petitioner failed to made out substantiate cause to condone delay of 158 days in filing the appeal.

Aggrieved by the said order, the present revision is filed only on the ground that finding of the appellate Court that the petitioner did not produce any document in support of his version for ill-health, etc., is erroneous and dismissed the petition.

None appeared for the petitioner and no representation on his behalf. But this Court cannot dismiss the revision for default. However, this Court is competent to decide the case by verifying the material on record without waiting for the petitioner's counsel as held by Delhi High Court in ***Nisha Sharma and others v. Vinod Kumar Sharma***¹. Therefore, persuaded by the judgment of the Delhi High Court, I would like to decide this revision in accordance with law.

As seen from the allegations made in the petition, the petitioner failed to prefer an appeal as he was suffering from old age ailments and Dengue fever. The petitioner was aged 65 years, not sufficiently old during these days. However, suffering from Dengue fever for the last five months without treatment by a competent doctor is unbelievable and the petitioner did not produce any scrap of paper to substantiate his contention that he underwent any treatment for the last five months which prevented him for preferring an appeal against the acquittal. In the absence of material, the petitioner's contention that he was suffering from ill-health and Dengue fever for more than five months to condone delay in the appellate Court is not in accordance with law and the order passed by the Court below cannot be faulted. When the petitioner came out with a specific plea that he was suffering from Dengue fever for the last five months, it is for him to establish that he underwent treatment for such prolonged period which prevented him from filing the appeal and it is also not known whether he underwent treatment as inpatient or outpatient and whether he is an outpatient, no one prevented him to file an

¹ 1990 Cri.L.J. NOC 57 (Delhi)

appeal. Therefore, I am unable to accept the contention of the petitioner.

In view of the limited jurisdiction conferred under Sections 397 and 401 Cr.P.C., this Court normally cannot interfere with the findings of the Court below, unless, such finding is manifestly perverse or patently erroneous. But on a perusal of the order, the order is supported by reasoning which warrants no interference by this Court while exercising power under Sections 397 and 401 Cr.P.C. Hence I find no ground to reverse the order passed by the Court below.

In the result, the Criminal Revision Petition is dismissed.

Miscellaneous petitions, pending if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

Date: 12.09.2017
ssp

