

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL REVISION CASE No.357 of 2017

ORDER:

This revision case is filed under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short, 'Cr.P.C.'), challenging propriety and legality of the order, dated 29.12.2016, passed in Crl.M.P.No.85 of 2016 in un-numbered Criminal Appeal of 2015 by the Principal Sessions Judge, Khammam, dismissing the application to condone delay of 404 days in filing the appeal.

2. The petitioner herein filed a petition under Section 5 of Limitation Act to condone delay of 404 days in filing the appeal against the order, dated 30.10.2014, passed by the I Additional Judicial Magistrate of First Class, Khammam, in D.V.C.No.21 of 2012, on the ground that the counsel did not inform him about the order passed in D.V.C. and he was totally kept in dark by his counsel and he got knowledge only when notice is served in the execution petition. Thereafter, the petitioner immediately filed copy application and obtained an order copy, changed the counsel and filed the appeal. Thus, there is delay of 404 days in filing the appeal. Therefore, the petitioner prayed to condone delay of 404 days. Respondent Nos.1 to 3 herein filed counter denying the material allegations while contending that the petitioner was present on the date of pronouncement of order and the counsel received the order copy in

D.V.C. Therefore, there is absolutely no ground to condone abnormal delay of 404 days in filing criminal appeal.

3. Upon hearing arguments, initially this Court called for report from the I Additional Judicial Magistrate of First Class, Khammam. In pursuance of the direction issued by this Court, the learned Magistrate submitted report, dated 23.09.2017, informing that the petitioner herein i.e., respondent in D.V.C., did not collect the order copy though he was present on the day when the order was pronounced. Therefore, the service of order by the Court on the petitioner herein deemed to have been effected.

4. During hearing, learned counsel for the petitioner reiterated the grounds urged in the revision. While, learned counsel for respondent Nos.1 to 3 supported the order passed by the learned Principal Sessions Judge, Khammam.

5. Considering the rival contentions, perusing the material available on record, the point that arises for consideration is:

“Whether delay of 404 days in filing the criminal appeal against the order in D.V.C.No.21 of 2012 on the file of the I Additional Judicial Magistrate of First Class, Khammam, be condoned?”

POINT :

6. As seen from the material on record, the petitioner was represented by his counsel, being the respondent before the trial

Court, and in the presence of both parties, order in D.V.C.No.21 of 2012 was pronounced in the open Court and learned Magistrate offered to serve copy of the order. But, the counsel representing the petitioner before the trial Court did not collect the copy of the order from the Bench Clerk on any working day. Therefore, it is only due to fault of the petitioner's counsel, the copy of order was not collected from the office of Magistrate Court.

7. According to Section 29 of the Protection of Women from Domestic Violence Act, 2005 (for short, 'D.V.C.Act'), the limitation for filing an appeal against the order passed under D.V.C.Act lies to the Court of Session and the limitation starts from the date when the copy of the order was served either on the respondent or on the petitioner, whichever is later. But, the counsel for the petitioner before the trial Court intentionally did not collect the copy of the order from the Bench Clerk. Therefore, the petitioner herein applied for certified copy through his changed counsel and filed appeal with delay condonation application. The appellate Court did not consider the delay with reference to Section 29 of the D.V.C.Act and as per Section 29 of the D.V.C.Act, it is the duty of the learned Magistrate to serve the copy of the order on the parties to the D.V.C.case. But, the learned Magistrate did not serve any copy on the parties or through counsel either by post or in any recognized modes under the Rules and throw blame on the counsel for his failure to collect the copy.

Therefore, the order passed by the Principal Sessions Judge, Khammam, is erroneous and the same is liable to be set aside, while remanding the matter to the Sessions Court to decide the application with reference to Section 29 of the D.V.C.Act and Rules framed thereunder with regard to the maintainability of service of order copy afresh.

8. In the result, the criminal revision case is allowed setting aside the order, dated 29.12.2016, passed in Crl.M.P.No.85 of 20916 in un-numbered Criminal Appeal of 2015 and remanded the matter to the Principal Sessions Judge, Khammam, to decide the application afresh, according to law.

9. Miscellaneous petitions pending, if any, shall stand closed.

M. SATYANARAYANA MURTHY, J

12th October 2017.

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