

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CRL.R.C.M.P.No.1802 of 2017 AND

CRIMINAL REVISION CASE No.1106 of 2017

COMMON ORDER:

Crl.R.C.M.P.No.1802 of 2017 is filed by the petitioner/accused under section 5 of Limitation Act, to condone the delay of 885 days in filing the revision challenging the docket order, dated 12-08-2014 passed in C.C.No.325 of 2015 by the IV Additional Chief Metropolitan Magistrate, Visakhapatnam. Learned counsel for the petitioner submits that the petitioner is ignorant about the period of limitation for filing revision before this Court and he is under the impression that the revision can be filed at any time, thereby there is a delay of 885 days in filing this revision case and prayed to condone the delay.

Learned counsel for the respondents opposed the petition on the ground that the petitioner is aware about pending proceedings and filed several proceedings before the Court in various criminal petitions and filed this present petition without any bonafides and prayed to dismiss the petition.

During hearing, learned counsel for the petitioner contended that the petitioner is innocent of the procedural laws, he is entitled to get the delay condoned, as he was

prevented by sufficient cause, which is beyond his reasonable control and prayed to condone the delay in filing revision.

Whereas learned counsel for the respondents contended that unless, the delay is explained by sufficient cause, the petitioner is not entitled to get delay condoned and he also filed several petitions one after other and failed in his attempt, thereby he is not entitled to claim a discretionary relief under Section 5 of Limitation Act to condone delay of 885 days.

The reason assigned by the petitioner is only that he is ignorant of law and that he is not aware that the revision is to be filed within 60 days from the date of passing the order. In fact, ignorance of law is not an excuse and the petitioner already filed a petition before this Court in Criminal Petition No.2408 of 2016 and the same was withdrawn by the petitioner and this Court by order, dated 02-11-2016 permitted the petitioner to withdraw the petition while giving liberty to renew his request, if advised, on any other grounds. Petitioner filed criminal petition No.2408 of 2016 in the year 2016 itself but latter he filed the present revision under Section 482 of Cr.P.C. The petitioner is guided by an Advocate by the date of filing the petitions but the petitioner contended that he moved application before the Court below and the Court did not entertain such application, therefore, he

approached this Court by filing revision, challenging the docket order, dated 12-08-2014.

If the trial Court did not entertain such application and passed any order, the remedy is otherwise i.e., to challenge the order passed by the trial Court but the petitioner cannot straight away approach this Court by filing revision against the docket order of taking cognizance, if really that is the ground. Therefore, on this ground, the delay cannot be condoned.

However, learned counsel for the respondent vehemently contended that in view of law declared by the Hon'ble Apex Court delay can be condoned in ***Basawaraj and another v. Special Land Acquisition Officer***¹, wherein the Hon'ble Apex Court held that Sufficient cause is the cause for which defendant could not be blamed for his absence. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, the word "sufficient" embraces no more than that which provides a platitude, which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case, duly examined from the view point of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party should not

¹ (2013) 14 SCC 81

have acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or it cannot be alleged that the party has "not acted diligently" or "remained inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the Court concerned to exercise discretion for the reason that whenever the Court exercises discretion, it has to be exercised judiciously. The applicant must satisfy the Court that he was prevented by any "sufficient cause" from prosecuting his case, and unless a satisfactory explanation is furnished, the Court should not allow the application for condonation of delay.

In another case reported in ***Brijesh Kumar and others v. State of Haryana and others***², the Hon'ble Apex Court held that the courts should not adopt an injustice-oriented approach in rejecting the application for condonation of delay. However the court while allowing such application has to draw a distinction between delay and inordinate delay for want of bona fides of an inaction or negligence would deprive a party of the protection of [Section 5](#) of the Limitation Act, 1963. Sufficient cause is a condition precedent for exercise of discretion by the Court for condoning the delay. This Court has time and again held that when mandatory provision is

² (2014) 11 SCC 351

not complied with and that delay is not properly, satisfactorily and convincingly explained, the court cannot condone the delay on sympathetic grounds alone.

There is no quarrel about the law declared by the Hon'ble Apex Court with regard to exercise of discretion under Section 5 of Limitation Act for condonation of delay.

Here, in this case, the reason for filing the present revision against the docket order is that the petitioner is not aware about pending proceedings. But, earlier he filed a quash petition in CrI.P.No.2408 of 2016 and it was withdrawn by the petitioner with a liberty to renew his request, if advised, on any other ground. Therefore, by the date of passing the order the petitioner is aware about his right to file an application in proper form but the petitioner leisurely approached this Court by filing the present revision questioning the docket order, dated 12-08-2014 and no reason was given for such inordinate delay of 885 days in filing revision before this Court. The word sufficient cause is not explained, it can be a cause which prevented the petitioner from filing revision, beyond his reasonable control. The petitioner pleaded only ignorance of law, even otherwise it is not a sufficient cause to condone delay of 885 days in filing revision against the docket order, dated 12-08-2014 taking cognizance for the offence punishable under Section 138 of

N.I. Act. Hence, I find no ground to condone the abnormal delay of 885 days in filing revision and consequently, the CrI.R.C.M.P.No.1802 of 2017 is liable to be dismissed.

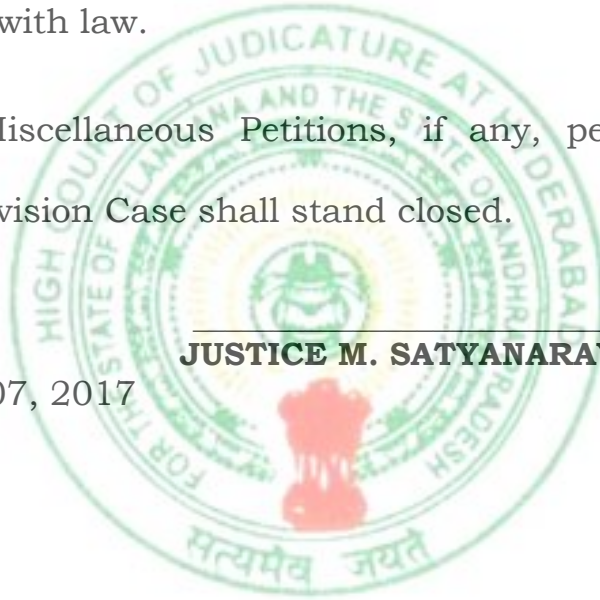
In the result, CrI.R.C.M.P.No.1802 of 2017 and CrI.R.C.No.1106 of 2017 are dismissed. However, the petitioner is at liberty to raise all specific pleas about competency of Court to take cognizance before the Court below and the Court below is directed to decide the same, in accordance with law.

The Miscellaneous Petitions, if any, pending in this Criminal Revision Case shall stand closed.

JUSTICE M. SATYANARAYANA MURTHY

September 07, 2017

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HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY



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