

*HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO
 + CRIMINAL REVISION CASE No.125 of 2017

% Dated 01.06.2017

Between:

Minati Subramanyam

.....Petitioner/
 defacto-complainant

and

\$ Anil Krishna Chitturi @Anil
 and two others

....respondents/ accused

State of Telangana
 Rep.by its Public Prosecutor
 High Court, Hyderabad

...Respondent/
 Complainant

! Counsels for the petitioner : Sri B.Nalinikumar,
 Sri K. S.Rahul,
 Sri M. S.Chandraiah

^ Counsel for respondents 1 to 3 : Ms. N. Vijayasree

Counsel for respondent No.4 : Public Prosecutor

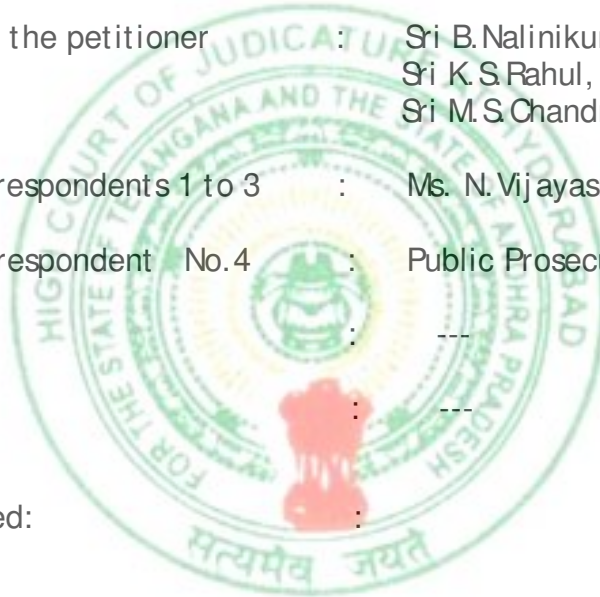
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? Cases referred: :

¹ 2015 9 SC 281 JT

¹2017 4 SC page 1 JT



HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

CRIMINAL REVISION CASE No.125 OF 2017

ORDER:

The revision petitioner is the defacto-complainant in C.C.No.321 of 2009 which is outcome of Cr.No.43 of 2009 of Women Police Station, CCS, D.D. Hyderabad, for the offences u/ secs.498-A, 406 r/w 34 IPC and under Sections 4 and 6 of the Dowry Prohibition Act, 1961. There are three accused no other than husband and parents-in-law of defacto-complainant. It is from the investigation and filing of final report in the form of chargesheet that was taken cognizance for the offences supra by the XIII Additional Chief Metropolitan Magistrate, Hyderabad, the trial Court acquitted the accused on 22.04.2016 by appreciation of evidence of P.Ws. 1 to 4 with reference to Exs.P.1 to P.45, C.1,2 and D.1 to D.15.

2. Against the said acquittal judgment, the defacto-complainant-victim filed an appeal before the Metropolitan Sessions Judge, Hyderabad with an application to condone the delay of 77 days sought in CrI.M.P.No.1781 of 2016 in the unnumbered appeal. The 77days delay is explained by her stating in her affidavit petition that she along with her father and also daughter went abroad on 14.04.2016 and returned to India on 14.06.2016 and in the meantime the acquittal judgment was passed by the trial Court on 22.04.2016 which she came to know in the last week of June, 2016 which is some time after her arrival to India from her enquiries about the case and she enquired about

availability of an advocate and approached the present appeal advocate on 01.07.2016 to obtain copy application in filing of the appeal and the certified copy of the judgment sought on 02.07.2016 was granted on 11.07.2016 and after obtaining of certified copy in going through it with reference to the record and preparing grounds, it is in that process there was delay of 77days in filing the appeal. She got chances of success on merits in the appeal against the acquittal judgment in which it resulted in injustice to her and sought the delay is thereby to be condoned to meet the ends of justice.

3. The affidavit petition was contested by counter of accused/ respondents 1 to 3 saying the averments in the affidavit of the petitioner are totally false so also the pretence of lack of knowledge of the defacto-complainant who through the learned Assistant Public Prosecutor even filed written reply arguments which she got prepared through her advocate Sri E Poornachandra Rao and some other advocates and when she came to know of the judgment to be delivered on a specific date, she could not have left the country. The A.1 working in USA and he and his parents are innocent and deliberately victimized by the defacto-complainant and there are no merits in the petition to condone the delay which is liable to be dismissed.

4. The learned Sessions Judge, by the impugned order, dated 24.11.2016, dismissed the petition holding that the passport and visa when perused shows visa was granted for the period from 16.02.2016 to 16.08.2016 and if at all the defato-complainant is

interested so much in prosecuting the case, she should have given top priority and should have stopped from going abroad and she cannot prosecute the case at her convenience and after certain period of limitation from acquittal judgment, there would be assurance of no appeal could be filed, allowing the petition by condoning the delay would cause prejudice to the respondents/accused. Hence, to dismiss the revision.

5. Heard both sides at length with reference to the respective contentions and perused the material on record.

6. As per the settled expressions, particularly in delay condonation in filing the application or appeal or revision, as the case may be, the approach required is pragmatic. What is required is explanation showing sufficient cause for the delay. It is basically for the reasons that no person deliberately without filing the appeal allow the time in his or her hands to expire but for some or the other reason and thereby the approach required is pragmatic and not pedantic. Here the approach adopted by the lower appellate Court in dismissing the petition is hyper-technical in its observation saying when the visa shows granted from February to August, she could not have left the country on 14.04.2016 by return on 14.06.2016 and could have been waited to see the result in cause filing appeal, if not, in time. Here, whether there is a just cause or deliberate allowing of appeal time to expire is the only question to be answered. In fact, within the period of visa and transit permit on the passport, once she is entitled to travel, she is at liberty to travel at her convenience and it is her statement on

oath of she was not informed of the result of the case much less acquittal to cause file appeal. When it was the case and after her arrival only an enquiry about the result of the case she came to know and engaged advocate and cause filed appeal, the delay occurred is a sufficient cause explained by her. When that is the delay, it requires no more explanation much less of day to day and when the approach is pragmatic but for if at all allow the application on costs. After expiry of the appeal time there is assurance of likelihood of no appeal would be filed against the acquittal, in favour of the accused is different from the allowing of delay condonation with pragmatic approach after notice and opportunity of hearing the respondents/accused also, that was totally ignored in the observation made by the lower appellate Court.

7. Having regard to the above, said order is per se unjust and not legal within the parameters required to be adopted and thereby the order impugned herein to be set aside in allowing the condonation delay subject to costs.

8. In the result, the revision is allowed and the impugned dismissal order of the lower appellate Court in CrI.M.P.No.1781 of 2016 dated 24.11.2016 is set aside and said application is allowed by condoning the delay, subject to costs of Rs.2,000/- to the Chief Justice Relief Fund or A.P.High Court Legal Services Committee concerned and file proof before the lower appellate Court with a memo along with copy of the order on or before 30.06.2017, for compliance or dismissal and if complied with, for the lower

appellate Court to number the unnumbered appeal by its restoration if otherwise in order. It is made clear that in the event of said compliance, the appeal before Court of Sessions is since maintainable even against the acquittal u/ sec.372 proviso of Cr.P.C., but for need of obtaining leave of High Court for the lower appellate Court to proceed with the appeal. The appellant is thus granted leave herein u/ sec.378(4) CrPC for continuing the appeal as per the expression of the Apex Court in Satyapal Singh Vs. State of Madhya Pradesh¹, and the same referred in the latest expression of the Apex Court in Rupender Singh Vs. State of Tripura², by left open for reconsideration of the anomalies pointed out in Satyapal Singh supra at appropriate time and till then even for appeal of the victim under Section 372 CrPC, leave of the High Court u/ sec. 378(4) is required.

Miscellaneous petitions if any pending in this revision, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

Dt.01.06.2017

Note: L.R. Copy to be marked.
Vvr.

¹ 2015 9 SC 281 JT

² 2017 4 SC page 1 JT