

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.26544 of 2018

Sri C.D.Manivannan

... Petitioner

Vs.

Smt.Janaki, Proprietrix,
Vishudev Granites and Marbles,
No.16, Venkat Nagar, First Floor,
School Road,
Kolathur,
Chennai-600 099.

...Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 31.08.2018 passed in CrI.M.P.No.12061 of 2018 in CrI.App.No. Unnumbered of 2018 and direct the learned Judge to take the case on file, on the file of the learned Principal City Civil and Sessions Judge, Chennai, in the interest of justice.

For Petitioner : Mr.M.Ravi

ORDER

This petition has been filed against the order passed by the Court below dismissing the application filed by the petitioner in CrI.M.P.No.12061 of 2018, to condone the delay of 5 days in filing the appeal.

2.The petitioner is the complainant in a 138 complaint. The complaint itself was dismissed and the accused person was acquitted by judgment, dated 23.05.2018, passed by the trial Court. Aggrieved by the same, the petitioner had filed an appeal with a delay of 5 days.

3.It is seen from the records that the petitioner had taken steps and had also filed Affidavit of Service on 09.08.2018 and the same has also been recorded by the Court below. The Court below had directed the petitioner to take fresh notice to the respondent returnable by 31.08.2018. Since there was no representation for the petitioner on 31.08.2018, the condone delay petition has been dismissed by the Court below.

4.This Court is of the considered view that the Court below ought to have given an opportunity to the petitioner. The Court below has chosen to dismiss the petition in the very first hearing itself, on the ground that there is no representation for the petitioner. The petitioner has filed a petition to condone the delay of 5 days in filing the appeal. The Court below ought to have been more lenient rather than being technical and should have given an opportunity to the petitioner. The order of the Court below requires interference by this Court.

5. In the result, the order of the Court below dated 31.08.2018 made in Crl.M.P.No.012061 of 2018, is hereby set aside and the Criminal Original Petition is allowed. The Court below is directed to restore the application on file and give an opportunity to the petitioner to serve notice on the respondent in the condone delay petition and thereafter proceed with the matter in accordance with law.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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TO:

1.The Principal,
City Civil and Sessions Judge,
Chennai.

+1cc to Mr.M.Ravi, Advocate sr.no.77824

spd(co)
nr 10/12/2018

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