



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.A.(MD) No.142 of 2018

Kumaravel ... Appellant/Petitioner/Complainant

vs.

G.Gandiban ... Respondent/Respondent/ Accused

PRAYER : Criminal Appeal filed under Section 374 Cr.P.C., praying to call for the records connected with the order in S.T.C.No.199 of 2007 on the file of the learned Judicial Magistrate No.I, Madurai, dated 14.08.2009 and set aside the order.

For Appellant : Mr.R.Alagumani

J U D G M E N T

For the sake of convenience, the appellant and the respondent herein are referred to as "the complainant" and "the accused" respectively in this judgment.

2.Heard Mr.R.Alagumani, learned counsel for the complainant.

3.The complainant initiated a prosecution in S.T.C.No.199 of 2007 before the Judicial Magistrate No.I, Madurai under Section 138 of the Negotiable Instruments Act against the accused. The said complaint was dismissed by the trial Court on 14.08.2009 under Section 256 Cr.P.C. by passing the following order:

"Case is pending since 3 years. No process filed. Complainant absent for a long time. No representation. Final notice issued by this Court in D.No.683/09 dated 31.07.09. Called at 5 P.M. Not present neither Complainant nor the Counsel for the Complainant present. Office Assistant has been examined as C.W.1. There is no reason to adjourn this case then and there without having any progress. Hence, the complaint is dismissed under Section 256 Cr.P.C."

3.Challenging the order of acquittal, the complainant has filed the present appeal against acquittal with a delay of 76 days. Therefore, the complainant filed M.P.(MD) No.1 of 2010 in Crl.A.(MD) No.SR29 of 2010 under Section 5 of the Limitation Act for condonation of the delay, which this Court has allowed today.



4. In this case, the trial Court passed the order in the year 2010 and this appeal itself is filed with a delay of 76 days, which of course, this Court has condoned. Thus, from the conduct of the complainant, it is apparent that he has not been diligently prosecuting the case before the trial Court and that is why the trial Court has given a finding that there is no reason to adjourn this case then and there without having any progress. The accused cannot be made to suffer for the dilatory tactics of the complainant. This Court does not find any reason to interfere with order of the trial Court in dismissing the complaint under Section 256 Cr.P.C.

5. Hence, this Criminal Appeal is devoid of merits and the same is dismissed.

Sd/-
Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar

To:

1. The Judicial Magistrate No.I,
Madurai.

COPY TO:
The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. **(Two Copies)**

Cr1.A. (MD) No.142 of 2018
21.03.2018

sj
JM/KKR/SAR 1/05.04.2018/2P/4C