



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 22.03.2018
CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH
Crl.O.P. (MD)No.4707 of 2018
in
Crl.A. (MD)No.SR10217 of 2010
and
Crl.A. (MD)No.SR10217 of 2010

M.A.Amsath Ibrahim : Petitioner / Appellant

-Vs.-

M.A.Muthu Mohammed : Respondent /Defendant

Prayer in Crl.O.P.(MD)No.4707 of 2018: Criminal Original Petition is filed under Section 378 (4) Cr.P.C., to grant leave to appeal against the judgment of acquittal dated 28.08.2009 passed by the learned Judicial Magistrate No.1, Madurai, and made in S.T.C.No.1864 of 2005 acquitting the accused / respondent.

Prayer in Crl.A.(MD)No.SR10217 of 2010: Criminal Appeal is filed under Section 378 Cr.P.C., to call for the records and set aside the order of acquittal judgment passed in S.T.C.No.1864 of 2005 and set aside with the order passed in S.T.C.No.1864 of 2005 dated 28.08.2009 pending on the file of the learned Judicial Magistrate No.1, Madurai.

For Petitioner : Mr.C.M.Arumugam

For Respondent : No appearance

O R D E R

For the sake of convenience, the parties will be referred to as the complainant and the accused.

2. The complainant initiated a prosecution in S.T.C.No.1864 of 2005 before the learned Judicial Magistrate No.I, Madurai, under Section 138 of the Negotiable Instruments Act, against the accused.

3. On 28.08.2009, the learned Judicial Magistrate No.I, Madurai, passed the following order in S.T.C.No.1864 of 2005, which reads as under:



"Case is pending since 4 years. No process filed. Complainant absent for a long time. No representation. Final notice issued by this Court in D.No.792/09 dated 24.08.09 called at 11 A.M. Complainant not present. Passed over. 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."

4. Challenging the said order, the complainant has filed the present appeal against the acquittal with a delay of 140 days. Therefore, the complainant has filed M.P.(MD)No. in CrI.A.(MD)No. under Section 5 of the Limitation Act for condonation of delay.

5. This Court has condoned the delay today.

6. It is trite that Special Leave to Appeal is not automatic. In this case, on a reading of the impugned order, it is seen that the matter was pending for four years and the complainant did not appear before the Court. The Court waited till 05.00 p.m..

7. In such view of the matter, this is not a fit case to grant Special Leave to Appeal. Hence, this Criminal Original Petition is dismissed. Consequently, the Criminal Appeal is rejected in the SR stage itself.

Sd/-

Assistant Registrar(crl side)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate No.1,
Madurai.

SM

VB/SKN/RSK/SAR1/06.04.2018/2P/2C

Order made in

CrI.O.P. (MD)No.4707 of 2018
in

CrI.A. (MD)No.SR10217 of 2010
and

CrI.A. (MD)No.SR10217 of 2010
22.03.2018