



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

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Crl.O.P.(MD)No.4709 of 2018
in
Crl.A.(MD)No.SR21523 of 2010
and
Crl.A.(MD)No.SR21523 of 2010

R.Paramasivan : Petitioner / Complainant

-Vs.-

Olaganathan : Respondent / Accused

Prayer in Crl.O.P.(MD)No.4709 of 2018: Criminal Original Petition is filed under Section 378 (4) Cr.P.C., to grant leave the petitioner permit to file the appeal against the acquittal order of the learned Judicial Magistrate No.IV, Thirunelveli, in C.C.No.385 of 2005 dated 30.04.2009 and call for record from the trial Court and set aside the acquittal order of the learned trial court.

Prayer in Crl.A.(MD)No.SR21523 of 2010: Criminal Appeal is filed under Section 378 Cr.P.C., to call for the records in C.C.No.385 of 2005 on the file of the learned Judicial Magistrate No.IV, Tirunelveli and set aside the same as illegal.

For Petitioner : Mr.S.M.A.Jinnah
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 C.C.No.385 of 2005 before the learned Judicial Magistrate No.IV, Tirunelveli, under Section 138 of the Negotiable Instruments Act, 1881, against the accused, in which, the trial court has acquitted the accused on 30.06.2009 under Section 256 Cr.P.C., on the ground that neither the complainant nor the advocate was present and that there was no representation for him. Challenging the acquittal, the complainant has filed the present appeal against the acquittal with a delay of 382 days. Hence, the complainant filed M.P.(MD)No.1 of 2011 in Crl.A (MD)No.SR21523 of 2010 under Section 5 of the Limitation Act for condonation of delay.



3. This Court has condoned the delay today.

4. Now, coming to the Special Leave Application, it is a trite law that Leave to an Appeal against the acquittal is not automatic. In this case, from 2005 to 2009, the prosecution was kept pending by the complainant without any progress. Therefore, the trial Court was right in dismissing the complaint under Section 256 Cr.P.C., for the absence of the complainant and his pleader.

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

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar

To

The Judicial Magistrate No.IV, Thirunelveli.

Crl.O.P.(MD)No.4709 of 2018
in

Crl.A.(MD)No.SR21523 of 2010

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JM/KK/SAR 1/11.04.2018/2P/2C