



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.R.C. (MD) No.70 of 2018

R.S.Rishikeshlalbabu : Petitioner
Vs.

1.The State represented through
Sub-Inspector of Police,
All Women Police Station,
Madurai Town,
Madurai.
(In Cr.No.25 of 2013).

2.T.M.Subasini : Respondents

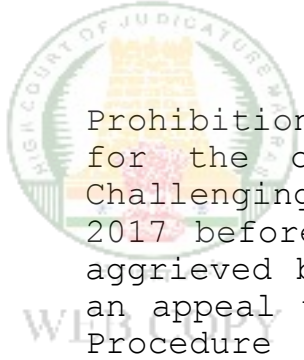
PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of the Criminal Procedure Code praying to call for the records of the lower Appellate Court in Cr.M.P.No.3184 of 2017 in unnumbered Crl.A.No.... of 2017 (on the file of the Principal District and Sessions Court, Madurai) in C.C.No.478 of 2014 [on the file of the Additional Mahila Court (J.M.Level), Madurai] and set aside the order passed by the lower Appellate Court therein, prevent abuse of the process/procedure of lower Appellate Court and lower Court to secure ends of justice, dismiss the Condone Delay Petition, dismiss the unnumbered Criminal Appeal preferred by the Defacto Complainant.

For Petitioner : Mr.R.S.Rishikeshlalbabu
(Party-in-Person)
For Respondent No.1 : Mrs.S.Bharathi,
Government Advocate (Crl.side)

ORDER

For the sake of convenience, the parties will be referred to by their name.

2. R.S.Rishikeshlalbabu, the petitioner herein, faced prosecution in C.C.No.478 of 2014 before the learned Judicial Magistrate (Additional Mahila Court), Madurai and was convicted on 08.05.2017 for the offences under Section 417 of the Indian Penal Code and Section 4 of Tamil Nadu Prohibition of Women Harassment Act and was sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo three months simple imprisonment for the offence under Section 4 of Tamil Nadu



Prohibition of Women Harassment Act and one year simple imprisonment for the offence under Section 417 of the Indian Penal Code. Challenging the conviction and sentence, he has filed CrI.A.No.50 of 2017 before the Sessions Court and the same is pending. While so, aggrieved by the quantum of sentence, the defacto complainant filed an appeal under the proviso to Section 372 of the Code of Criminal Procedure with a delay of 5 days along with an application in Cr.M.P.No.3184 of 2017 under Section 5 of the Limitation Act for condonation of delay. The learned Sessions Judge, after hearing the defacto complainant and R.S.Rishikeshlalbabu, by a detailed order dated 19.12.2017, has condoned the delay, aggrieved by which, R.S.Rishikeshlalbabu is before this Court.

3. Heard Mr.R.S.Rishikeshlalbabu, party-in-person.

4. Mr.R.S.Rishikeshlalbabu, the petitioner herein, submitted that the defacto complainant should have filed the appeal within 30 days, but, she having not filed the appeal within the period of limitation, an application for condonation of delay is not maintainable.

5. I am unable to persuade myself to agree with this view for the simple reason that Section 5 of the Limitation Act itself is available only for condonation of delay. In other words, had the defacto complainant filed the appeal within the period of limitation, then there is no question of filing an application under Section 5 of the Limitation Act.

6. Mr.R.S.Rishikeshlalbabu placed strong reliance on the judgment of the Gujarat High Court in State of Gujarat vs. Hasmukhbhai Mangalbhay Patel, decided on 17 November, 2006 and contended that the Gujarat High Court had refused to condone the delay of 25 days in filing an appeal against acquittal by the State.

7. The power of the Court to condone the delay conferred by Section 5 of the Limitation Act is a power which has to be exercised by the Court taking into consideration the facts and circumstances of each case. There cannot be an universal thumb rule in this regard. In this case, the defacto complainant has stated that the bundle was misplaced in her house and, therefore, the delay had occasioned. It may be necessary to bear in mind that the defacto complainant is a lady and she has been prosecuting the accused for the offences under Sections 417 of the Indian Penal Code and 4 of Tamil Nadu Prohibition of Women Harassment Act. The very purpose of introduction of the proviso to Section 372 Cr.P.C., was to provide a platform for victims to approach Higher Forums in cases where the accused is acquitted or inadequate sentence has been passed by Trial Courts. In this case, the explanation offered by the defacto complainant for condoning the delay of 5 days in filing the appeal merits acceptance. In such view of the matter, this Court does not find any infirmity in the order passed by the Sessions Court warranting interference.



8. In the result, this Revision is devoid of merits and accordingly, the same is dismissed.

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Sd/-

Assistant Registrar(CS-III)

Sub Assistant Registrar

To

1.The Principal District and Sessions Court,
Madurai.

2.The Additional Mahila Court (J.M.Level),
Madurai.

3.The Sub-Inspector of Police,
All Women Police Station,
Madurai Town,
Madurai.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to M/S.R.S.Rishikeshlalbabu, Party-in-Person, SR.No. 46687

Order made in
Cr1.R.C.(MD)No.70 of 2018
Dated:-
07.02.2018

SML

JM/SKN RSK/SAR 1/15.02.2018/3P/6C