



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2018

CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.R.C. [MD] .No. 448 of 2018

and

Crl.M.P. (MD) .No. 6315 of 2018

1.A.P.Krishnan

2.Suseela

:Petitioners/Respondents/
Accused

Vs.

1. K.Parameshwari

:1st Respondent/Petitioner/
Defacto Complainant

2. The Public Prosecutor,
Principal Sessions Court, Dindigul.

:2nd Respondent/3rd Respondent/
Complainant

PRAYER : Criminal Revision is filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 25.06.2018 made in Crl.M.P.No.1469 of 2017 in unnumbered C.A.No. of 2017, on the file of the Principal Sessions Court, Dindigul in C.C.No.119 of 2006 on the file of the District Munsif cum Judicial Magistrate, Kodaikanal.

For Petitioner : Mr.M.Muthugeethayan

ORDER

This Criminal Revision has been filed against the order dated 25.06.2018 made in Crl.M.P.No.1469 of 2017 in unnumbered C.A.No. of 2017, on the file of the Principal Sessions Court, Dindigul in C.C.No.119 of 2006 on the file of the District Munsif cum Judicial Magistrate, Kodaikanal. The Court below has condoned the delay of 494 days in representing the papers, which were returned for certain compliances.

2.The first respondent preferred the complaint under Sections 494 and 109 IPC against the petitioner and the second respondent. The Trial Court, on consideration of the evidence, was pleased to acquit both the accused persons, by an order dated 18.08.2015.

3.Aggrieved by the said order, the first respondent filed a criminal appeal before the Principal Sessions Court, Dindigul. The appeal was filed on time. However, the appeal papers were returned for certain deficiencies and the same was not represented on time. Thus, a delay of 494 days occurred, by the time the papers were represented in the appeal. Therefore, the first



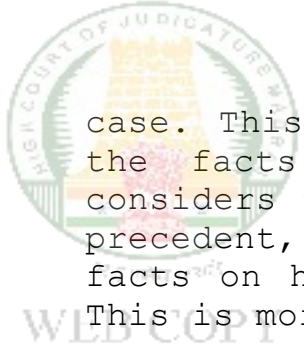
respondent filed Cr.M.P.No.1469 of 2017 to condone the delay in representation. In the affidavit filed in support of the petition, the first respondent has stated that the delay occurred, since she was not well and therefore, she was not able to contact the lower Court counsel. Thereafter, she has taken the bundle from the counsel and had handed it over to the other advocate at Dindigul. As a result of this, there was a delay in representation.

4.The petitioner herein opposed the said petition for condoning the delay in representation on the ground that she is being continuously harassed by the first respondent by filing one case after another and that there is no such advocate called Jawahar in Kodaikanal and therefore, the very ground, on which the affidavit has been filed in respect of the petition to condone the delay in representation, is false. The petitioner also had stated that there are no convincing reasons given by the first respondent for the enormous delay and on that ground, she sought for the dismissal of the petition. The Court below by considering the petition, has found that the appeal has been filed on time and the delay has occurred only in representation. Therefore, the Court exercise its discretion has thought it fit to allow the petitioner with cost by an order dated 25.06.2018.

5.The learned counsel for the petitioner submitted that the Court below has not considered any of the objections that were raised by the petitioner for condoning the delay in representation. The learned counsel also brought to the notice of this Court, the judgment of the **Hon'ble Supreme Court** in **H.Dohil Constructions Company Private Limited Vs. Nahar Exports Limited and Another** reported in (2015) 1 SCC.

6.Admittedly the complaint that was given by the first respondent, ended in acquittal before the Trial Court. The first respondent had a statutory right of appeal against such an order of acquittal. The appeal was also filed on time. However, the delay occurred due to the fact that the first respondent did not contact her counsel, due to health problem and had also changed the counsel for the purpose of prosecuting the appeal. Delay in representation is more an issue between the petitioner and the Court. Unless the Court finds that the prejudice will be caused by condoning the delay in representation, the Court should be liberal while considering the petition to condone the delay in representation.

7.The first respondent has a statutory right of appeal and the appeal has also been filed on time. Therefore, an opportunity must be given to the first respondent to prosecute the appeal in accordance with law. The judgment cited by the learned counsel for the petitioner was the one which was delivered by the Hon'ble Supreme Court on consideration of the particular facts of that



case. This judgment cannot be applied to the present case, since the facts are different and in each case, where the Court considers the petition for condonation of delay, more than law of precedent, what is important for the Court is to consider the facts on hand and decide whether the delay has to be condoned. This is more so in cases where there is a delay in representation.

8. This Court does not find any illegality or infirmity in the order passed by the Trial Court. Accordingly, the Criminal Revision petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-III)

To

1. The Principal Sessions Judge,
Dindigul.
2. The District Munsif cum
Judicial Magistrate,
Kodaikanal.
3. The Public Prosecutor,
The Principal Sessions Judge,
Dindigul.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.M.Muthugeethayan, Advocate SR.No.77673

Sji

MK/SKN/SAR 3/31.08.2018/3P/6C

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