



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.10.2018

CORAM

THE HON'BLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C.[MD]No.565 of 2018

and

Crl.M.P.[MD]No.7915 of 2018

Sahayadhas : Revision Petitioner/
Petitioner/Respondent

Vs.

Rajamony : Respondent/Respondent/
Petitioner

PRAYER: Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code, praying to call for the records pertaining to the impugned order passed by the learned Principal Sessions Court, Kanyakumari District at Nagercoil Cr.M.P.No.2829 of 2017 in R.P.No. of 2017 dated 10.07.2018 and to set aside the same and allow this Criminal Revision Petition.

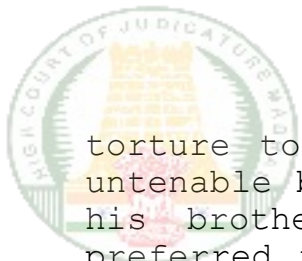
For Petitioner : Mr.M.R.Sreenivasan

O R D E R

This revision petition is directed against dismissal of Section 5 application to condone the delay of 449 days in preferring the application to set aside the ex-parte order. The impugned order which is now challenged is dated 10.07.2018.

2.The revision petitioner herein is the son of the respondent. An application for maintenance filed by the respondents before the Judicial Magistrate, Kuzhithurai in M.C.No.29 of 2013 was disposed of by the learned Judicial Magistrate, Kuzhithurai, awarding Rs.6,000/- as monthly maintenance. The said order was passed on 06.02.2016. Aggrieved by that, an application has been filed by the revision petitioner herein to set aside the order. Since there was delay of 449 days in filing the application, application to condone the delay was also filed. The trial Court, after considering the plea to condone the delay has dismissed it on 10.07.2018.

3.The reason stated in the order by the trial Court is that due to quarrel between the petitioner and his brother, his father has been used by his brother as pawn, so as to cause mental



torture to the petitioner. But, the said reason appears to be untenable because the quarrel between the revision petitioner and his brother was in the year 2009. Whereas, his father has preferred maintenance application in the year 2013 and the same was allowed in the year 2016. Aggrieved by the said dismissal order, the present revision petition is filed.

4. Heard the learned Counsel appearing for the revision petitioner and perused the materials available on record.

5. The order which is sought to be set aside is not in fact an ex-parte order. Though, the petitioner herein was given adequate opportunity to file his counter, he failed to file his counter and hence, he was set ex-parte. Thereafter, he has taken out an application to set aside an ex-parte order and delayed the matter further. When the application to set aside the ex-parte order was taken up for enquiry, again he remained absent. In the said circumstances, the trial Court had set him ex-parte and examined the petitioner, considered the status of the revision petitioner and the respondent herein and had fixed a sum of Rs.6,000/- as monthly maintenance which works out to Rs.200/- per day.

6. The revision petitioner herein had been put to notice about the plight of his father and plea of his father to get maintenance as early as in the year 2013. But, the petitioner had not contested the case and allowed the matter to go ex-parte. The trial Court has shown undue indulgence to adjourn the matter time and again and at last taken a decision after a lapse of three years. Thereafter also, the revision petitioner had not shown keen interest to contest the matter or to pay the maintenance to his father as ordered by the Court below. Another 449 days he has slept and filed an application to set aside the ex-parte order quoting some incident between him and his brother which occurred 9 years ago.

7. Considering all these facts, the trial Court has dismissed the condone delay petition. Since the reasons attributed for the delay is untenable, this Court also finds no ground to condone the delay and keep the matter pending. Hence, this Criminal Revision Case stands dismissed. However, the dismissal of the revision petition will not be a bar for the petitioner herein to approach the trial Court to seek modification of the maintenance amount in future, if he has any point in his favour. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl Side)

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To

1. The Principal Sessions Judge,
Kanyakumari District at Nagercoil.

2. the Judicial Magistrate, Kuzhithurai.

+1 CC To MR.M.R.SREENIVASAN, Advocate SR. NO. 89173

Cr1.R.C.[MD]No.565 of 2018

05.10.2018

mr

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