

HONOURABLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL REVISION CASE No. 1250 of 2018

ORDER:

Heard the learned counsel for the petitioner as well as the second respondent.

The present criminal revision case is filed aggrieved by the orders passed in CrI.M.P.No.2062 of 2017 in CrI.R.C.(SR) No.9171 of 2017 dated 20.03.2013, on the file of the Metropolitan Sessions Judge, Hyderabad, dismissing the petition to condone the delay of 32 days in filing the appeal.

The facts of the case are that the petitioner herein is the sole accused in C.C.No.96 of 2016 for the offence punishable under Section 138 of Negotiable Instruments Act. After trial, the petitioner was imposed a fine of Rs.60,000/- in default of payment to undergo simple imprisonment for one month by judgment dated 6.6.2017.

Aggrieved by the said judgment, the petitioner filed an appeal vide CrI.R.C.(SR) No.9171 of 2017 on the file of the Metropolitan Sessions Judge, Hyderabad. Since there is a delay of 32 days in filing the appeal in the Court of the Metropolitan Sessions Judge, Hyderabad, the petitioner has filed CrI.M.P.No.2062 of 2017 to condone the same. The second respondent filed counter-affidavit and contested the same. The said petition was dismissed by the lower appellate Court on the ground that the petitioner has not produced any material to show that he suffered illness and he has not appeared before the trial Court. However, he filed a certificate issued by Dr.B.D.Naidu of Viskhapatnam on 26.07.2017. In

those circumstances the lower appellate Court having not accepted the theory of not filing the appeal in time, dismissed the petition by orders dated 20.03.2018. Aggrieved by the same, the present criminal revision petition is filed.

The learned counsel appearing for the petitioner would contend that he has produced the medical certificate dt.26.07.2017 to show that he was suffering from severe back pain and as such he could not attend the trial court as well as he could not file an appeal within time. As far as the production of medical certificate from Dr.B.D.Naidu of Visakhapatnam, the learned counsel would contend that though the petitioner is resident of Srikakulam, he has taken treatment from Dr.B.D.Naidu of Visakhapatnam. Therefore, he requested the court to consider the same and condone the delay enabling him to prosecute the appeal.

A perusal of the material would indicate that the petitioner was suffering from back pain and that is the reason he could not attend the trial Court when the judgment was delivered and he could not file the appeal within time.

Be that as it may, the right of appeal for the petitioner cannot be deprived of on the technicalities and that he has not explained the delay properly; more so, when the delay is only 32 days.

In these circumstances, this Court deem it appropriate to condone the delay of 32 days subject to payment of Rs.5,000/- (Rupees five thousand only) to the learned counsel for the second respondent herein within a period of two weeks from today. Accordingly, the criminal revision case is allowed condoning the

delay of 32 days enabling the petitioner to prosecute the appeal before the lower appellate Court.

The miscellaneous petitions, if any, pending in this criminal revision case shall stand closed.

P. KESHA VA RAO,J

Date:08.06.2018
Ccm



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