

HON'BLE SRI JUSTICE P. KESHA VA RAO

CRIMINAL REVISION CASE No.1331 of 2018

ORDER:

Heard the learned counsel for the petitioner and the learned counsel appearing for the first respondent.

The present criminal revision case is filed questioning the orders dated 04.09.2017 passed in CrI.M.P. No.742 of 2016 in CrI.A.No. nil of 2016 on the file of the Principal Sessions Judge, Nellore, dismissing the petition filed under Rule 127 of Criminal Rules of Practice to condone the delay of 75 days in filing the appeal.

The facts of the case are that the petitioner is charged for the offence under Section 138 of the Negotiable Instruments Act vide C.C.No.286 of 2015 on the file of the Additional Judicial Magistrate of First Class, Gudur. Subsequently, the said calendar case was transferred to the Court of the Principal Junior Civil Judge, Gudur vide C.C.No.6 of 2016. Since the notice is not served subsequent upon the transfer of the case to the transferee Court, there was no representation on behalf of the petitioner. As such, there was no representation and on that ground, the calendar case was dismissed on 08.03.2016. Immediately, after coming to know about the dismissal of the complaint, the petitioner filed CrI.A.No.nil of 2016 on the file of the Principal Sessions Judge, Nellore. Since there is a delay of 75 days in filing the said appeal, the petitioner filed CrI.M.P.No.742 of 2016 to condone the said delay. The Court below, dismissed the said petition on 4.09.2017. Aggrieved by the same, the present criminal revision case is filed.

Learned counsel appearing for the petitioner, would contend that since no notice is served either on the petitioner or on the counsel for the petitioner in the Court below, when the matter has been transferred from the Court of the Additional Judicial Magistrate of First Class, Gudur to the Court of the Principal Junior Civil Judge, Gudur, there was no representation on behalf of the petitioner. The above said act of not representing the matter is neither intentional nor deliberate, but due to the reasons stated supra.

Per contra, the learned counsel appearing for the first respondent would contend that the acquittal of an accused for the offence under Section 138 of the Negotiable Instruments Act, an appeal lies to this Court, but not to the Sessions Judge, Nellore. On that ground, even if the delay is condoned, no useful purpose would be served. However, the learned counsel appearing for the petitioner would contend that if the delay is condoned, the petitioner can seek return of the papers from the Court of the Principal Sessions Judge, Nellore and present the same in this Court whereby the delay can be satisfactorily explained.

Keeping the said submissions in view, and also the reason shown for non-appearance of the petitioner on the relevant date, the criminal revision case is allowed and orders dated 04.09.2017 passed in CrI.M.P. No.742 of 2016 in CrI.A.No. nil of 2016 on the file of the Principal Sessions Judge, Nellore are set aside condoning the delay of 75 days in filing the appeal against the order dated 08.03.2016 in C.C.No.6 of 2016 on the file of the Principal Junior Civil Judge, Gudur. As far as the return of papers to the petitioner for

presentation in the proper Court, it is open to the petitioner to take appropriate steps available to him, as per law.

Miscellaneous petitions, if any, shall also stand dismissed.

P. KESHA VA RAO, J

Date: 19.07.2018.
CCM



HON'BLE SRI JUSTICE P. KESHA RAO



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