

THE HONOURABLE SRI JUSTICE P.KESHA RAO

CRIMINAL REVISION CASE No.1362 of 2018

ORDER:

Heard the learned counsel for the revision petitioner as well as the learned Public Prosecutor.

The present criminal revision case is filed aggrieved by the orders passed in Criminal M.P.No.41 of 2018, dated 16.05.2018 dismissing the application filed to condone the delay of 130 days in filing the Criminal Appeal.

The facts of the case are that the petitioner herein who is accused No.2 has been convicted and sentenced to undergo simple imprisonment for a period of one year and to pay fine of Rs. 500/- and in default to undergo simple imprisonment for a period of three months, for the offence under Section 411 IPC in Sessions Case No.31 of 2011, dated 15.11.2017 on the file of the Assistant Sessions Judge, Amalapuram.

Aggrieved by the same, the petitioner herein filed an appeal before the Principal District and Sessions Judge, East Godavari, at Rajamahendravaram. However, as there was a delay of 130 days in filing an appeal, the petitioner filed CrI.M.P.No.41 of 2018 explaining the delay. The said petition was dismissed *vide* orders dated 16.5.2018, against which the present criminal revision case has been filed.

When the matter is taken up, the learned Public Prosecutor appearing for the respondent-State have not opposed to condone the delay. Even a perusal of the impugned order also would indicate that the petitioner was convicted in Sessions Case No.31 of 2011 by order dated 15.11.2017. After the Judgment and before filing the appeal, the petitioner was arrested in Crime No.250 of 2017 of II Town Police Station, Rajahmundry and was in judicial custody from 20.11.2017 to 18.12.2017. During the period of judicial custody, he was produced on P.T. warrant in

Cr.No.66 of 2017 of Yanam Police Station and was produced before the Judicial Magistrate, Yanam and was granted bail on 1.3.2018. After release, he suffered from viral fever and he has undergone treatment from 5.3.2018 to 30.3.2018. He has also produced the medical certificate to that effect. He was treated in Janatha Clinic and Nursing Home, Mummidivaram. In those circumstances, the appeal could not be filed within the limitation period. However, the Court below disbelieving the medical certificate i.e., Ex.P1, said to have been issued by Janatha Clinic and Nursing Home, Mummidivaram dismissed the said application.

A perusal of the facts would demonstrate that the petitioner has explained the delay upto 1.3.2018 with reference to the crime numbers in which he was in judicial custody and thereafter, suffered from viral fever from 5.3.2018 to 30.3.2018. Thereafter, there is a delay of 25 days, for which the petitioner cannot be

penalized and in such process, the right of appeal cannot be deprived of. In these circumstances, this Court is of the opinion that the petitioner has properly explained the delay of 130 days in which event, the delay is liable to be condoned.

Accordingly, the criminal revision case is allowed condoning the delay of 130 days in filing the appeal before the Principal District and Sessions Judge, East Godavari, Rajamahendravaram. However, it is made clear that the petitioner can move an appropriate application for grant of bail before the learned Principal District and Sessions Judge, East Godavari and seek appropriate orders.

Miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE P.KESHA RAO

Date:7.6.2018

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THE HONOURABLE SRI JUSTICE P.KESHAHA RAO



CRIMINAL REVISION CASE No.1362 of 2018
Date:7.4.2018

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