

THE HON'BLE SRI JUSTICE P.KESHA RAO  
CRIMINAL REVISION CASE No.2224 OF 2014

ORDER:

Heard the learned counsel for the petitioner and the respondents 1 to 9 and learned Public Prosecutor for the State-respondent No.10.

The present Criminal Revision Case is filed questioning the orders passed in CrI.M.P.No.306 of 2013 in the unnumbered CrI.A. of 2013, dated 05.09.2014, dismissing the petition filed to condone the delay of 175 days in filing the appeal against the acquittal of respondents 1 to 9 passed in C.C.No.170 of 2012, dated 17.08.2012 on the file of the Additional Judicial Magistrate of First Class, Parvathipuram.

The facts, in brief, are that the petitioner herein filed a complaint against the respondents 1 to 9 for the offences under Sections 323, 341, 506(2) r/w 34 I.P.C. The learned Magistrate, after taking cognizance of the offence, numbered the case as C.C.No.170 of 2012. After full-fledged trial, the learned Magistrate by judgment dated 17.08.2012 acquitted the respondents 1 to 9 herein under Section 248(1) of Cr.P.C. Aggrieved by the said judgment, the petitioner herein filed an appeal in the Court of the Principal Sessions Judge, Vizianagaram. Since there is a delay of 175 days in filing the appeal, the petitioner filed CrI.M.P.No.306 of 2013. The respondents 1 to 9 herein filed a counter opposing the said petition. The learned Sessions Judge, after considering the matter, was pleased to dismiss the petition by orders dated 05.11.2014. Aggrieved by the same, the present Criminal Revision Case is filed.

The learned counsel appearing for the petitioner contended that the learned Sessions Judge erred in dismissing the petition filed to condone the delay of 175 days. The petitioner has sufficiently explained the delay of 175 days.

Per contra, the learned counsel appearing for the respondents 1 to 9 supported the impugned order and contended inter alia that the petitioner miserably failed to explain the delay of 175 days in filing the Criminal Appeal. In fact, except stating that after the pronouncement of the judgment, he approached the concerned police and got filed copy application for certified copy of the order, nothing has been stated.

Having heard both the counsel and from the perusal of the material on record, it is revealed that the respondents 1 to 9 herein are charged for the offences under Sections 323, 341, 506(2) r/w 34 I.P.C. in C.C.No.170 of 2012 on the file of the Court of Additional Judicial First Class Magistrate, Parvathipuram. The learned Magistrate, after appreciating the evidence, was pleased to acquit the respondents 1 to 9 by judgment dated 17.08.2012. Aggrieved by the same, the petitioner filed an appeal. In the affidavit filed in support of the delay petition, the petitioner herein has stated that after pronouncement of the judgment, he approached the concerned police and got filed copy application and further stated that he was under a mistaken impression that the investigating agency would prefer an appeal and as such, he could not file the appeal within the time.

It is relevant to mention herein that when once the petitioner was inclined to file an appeal against the order of acquittal of respondents 1 to 9 herein, nothing precluded him from immediately applying the copy

application for certified copy of the judgment enabling him to prefer an appeal. It is not necessary for the petitioner to wait whether or not the prosecution would file an appeal and in the process, he cannot take a chance for filing an appeal. So, the reason given by the petitioner that the State may prefer an appeal, is not a ground to condone the delay of 175 days. That apart, the C.C. is of the year 2012 and the offences alleged against the respondents 1 to 9 are under Sections 323, 341, 506(2) r/w 34 I.P.C. Though the delay is not abnormal and it is only 175 days, still it is incumbent upon the petitioner to give a reasonable explanation for the said delay. Except taking a chance that the State may file an appeal, he has not produced any other material more particularly, the copy application filed before the police, to substantiate his contention that he was waiting for the appeal to be filed by the prosecution. Further, though the present Criminal Revision Case is filed in the year 2014, no steps have been taken to get the matter disposed of. After a lapse of six years, this Court is of the opinion that no purpose would be served in continuing the proceedings against the respondents 1 to 9 herein. Therefore, on both the counts, this Court is not inclined to accept the contentions of the learned counsel for the petitioner. Therefore, there are no merits in the Criminal Revision Case and the same is liable to be dismissed.

Accordingly, the Criminal Revision Case is dismissed.

Pending miscellaneous petitions, if any, shall also stand closed.

\_\_\_\_\_  
P.KESHAVA RAO,J

16<sup>th</sup> AUGUST 2018.

Tsr

