

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.01.2019

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.15123 of 2017

Kalaiselvan

... Petitioner

-Vs-

Santhi

... Respondent

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to set aside the order passed in Crl.M.P.No.1193 of 2015 on the file of Principal Sessions Judge, Namakkal in C.R.P. No. not numbered of 2015 dated 29.6.2016 and restore the same and take on file and dispose the case on merits to secure the ends of justice.

For Petitioner : Mr.S.Victor Prasath

For Respondent : No Appearance

ORDER

This petition has been filed as against the dismissal of the condone delay petition filed by the petitioner before the Principal District and Principal Sessions Court, Namakkal.

2. The respondent had filed a petition in M.C.No.10 of 1990 against the petitioner seeking for maintenance. This petition was ordered ex parte on 09.01.2015. The petitioner filed an appeal before the Principal District and Sessions Court, Namakkal, against the said order with a delay of 235 days. This petition was entertained by the Court below and a notice was also ordered to the respondent. When the matter came up for hearing on 29.06.2016, since there was no representation on the side of the petitioner, the petition was dismissed for default. Aggrieved by the same, the present petition has been filed before this Court.

3. The respondent has been served with notice and the name is also printed in the cause list. She is neither present in person nor through her counsel. Therefore, this Court proceeded to decide the petition on its own merits.

4. Aggrieved by the order of maintenance dated 09.01.2015 made in M.C.No.10 of 1990, the petitioner filed an appeal before the Court below. The petitioner filed this appeal with the delay of 235 days. The petition was also entertained and when the matter was posted for counter and disposal on 29.06.2016. Unfortunately on the said date, the counsel for the petitioner was not able to present before the Court below. Therefore, the petition was dismissed for default. This Court is of the considered view that one last opportunity can be given to the petitioner to pursue the appeal.

5. In the result, the order passed by the Court below in CrI.M.P.No.1193 of 2015, dated 29.06.2016, is hereby set aside and the Court below is directed to take the petition on file and issue a notice to the respondent and decide the same in accordance with law.

6. Accordingly, this Criminal Original Petition is allowed.

Sd/-  
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

kal/ssr

To

1. The Principal Sessions Judge,  
Namakkal.

2. The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.S.Victor Prasath, Advocate SR.No.538

CrI.O.P.No.15123 of 2017

RSV(CO)  
GMY(31/01/2019)