

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.10.2019

CORAM

THE HONOURABLE MR. JUSTICE M.S. RAMESH

Cr1.O.P.No.18185 of 2017

Thirumalaisamy

...Petitioner

Vs.

1. Moorthy

2. Kathirvel

3. Chinnamani @ Thirumathal

4. Gandhimathi

5. The Sub Inspector of Police,
Kundadam Police Station, Kundadam,
Dharapuram Taluk,
Tiruppur District.

...Respondents

PRAYER : Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to set aside the order dated 13.07.2017 passed in C.M.P.No.172 of 2017 on the file of the Principal District and Sessions Court, Tiruppur.

For Petitioner : Mr.C.Prakasam

For Respondents: Mr.A.K.Sridharan [R1 to R4]

Ms.Saratha Devi.V

Government Advocate (Cr1. Side)
[R5]

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O R D E R

This Criminal Original Petition is filed to to set aside the order dated 13.07.2017 passed in C.M.P.No.172 of 2017 on the file of the Principal District and Sessions Court, Tiruppur.

2. Not being satisfied with the punishment against the respondents 1 to 4 herein, the petitioner had preferred an appeal against the judgment dated 17.03.2015 in C.C.No.100 of 2004 by the Learned Judicial Magistrate, Dharapuram along with

an application, seeking to condone the delay of 200 days in filing the appeal, which came to be dismissed for non appearance of the petitioner. The said order of dismissal dated 13.07.2017, is under challenge before this Court.

3. The learned counsel appearing for the petitioner submitted that the petitioner herein is aged about 89 years and he is undergoing various medical ailments. It is his intention to file an appeal against the lesser sentence imposed on the respondents 1 to 4 herein and in spite of several requests made to the Police in this regard, no appeal was preferred by the fifth respondent herein. It is in this background, he has chosen to file the appeal. Quoting his medical ailment as well as his reliance on the fifth respondent to file an appeal, the learned counsel would submit such reasons, as "sufficient" cause to condone the delay.

4. The learned counsel appearing for the respondents 1 to 4 herein, on the other hand, submitted that there are no valid reasons assigned in the petition, seeking for setting aside the order of dismissal for default. He would further submit that the petitioner has filed this application with a malafide intention, since the Trial Court had properly appreciated the evidence and had imposed the punishment in conformity with the proved charges.

5. The Court below while dealing with the petitioner's application to condone the delay, has not assigned any reason but had dismissed the same only on the ground that the petitioner's counsel was absent.

6. A perusal of the diary extracts also, does not reveal that though the matter was listed on various occasions earlier, the presence of the counsels was not recorded. The only reason that could be derived from a perusal of the diary extract is that the learned counsel for the petitioner was absent only on 13.07.2017, on which day alone, the application, seeking to condone the delay came to be dismissed for default.

7. By taking into account, the reasons assigned by the petitioner for his inability to file the appeal in time, this Court is inclined to take a lenient view and therefore, is inclined to condone the delay. Nevertheless, this Court is also conscious of the view that by condoning the delay of such a long period, some prejudice could be caused to the respondents 1 to 4 herein also and therefore, if the petitioner is put on terms, the ends of justice could be secured.

8. In the light of the above observations, the impugned order dated 13.07.2017 is set aside and consequently, the delay of 200 days in filing the appeal, stands condoned, subject to the condition, the petitioner pays a sum of Rs.10,000/- by way of cost to all the respondents 1 to 4 jointly and shall produce proof of payment of cost along with memo to the Appellate Court. Such cost should be paid within a period of two weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Sub Inspector of Police,
Kundadam Police Station, Kundadam,
Dharapuram Taluk,
Tiruppur District.
2. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.A.K.Sridharan, Advocate Sr.85823

+1cc to Mr.C.Prakasam, Advocate Sr.85967 [26/11/2019]

CrI.O.P.No.18185 of 2017

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srg 18/10/2019

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