

THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL REVISION CASE No.1487 of 2018

ORDER :

Impugning the order in Crl.M.P.No.1197 of 2017, dated 27.03.2018, by the learned appellate Court-cum-Metropolitan Sessions Judge, Hyderabad, in the un-numbered Criminal Appeal (S.R.) No. 5787 of 2017, to condone the delay of 113 days ended in dismissal, which is un-numbered appeal impugning the order of the learned Magistrate in D.V.C.No.71 of 2014, dated 30.12.2016, present revision is filed.

2. The parties will be referred as they are arrayed in the DVC for the sake of convenience.

3. The reasons assigned in the application seeking to condone the delay from pages 2 and 3 of the application were that during the D.V.C.No.71 of 2014 proceedings before the IV Metropolitan Magistrate, Hyderabad, the petitioner and respondent No.1, who are wife and husband, compromised the matter and respondent No.1, no other than the son of respondent Nos.2 and 3 and brother respondent No.4, whose wife is respondent No.5, informed respondent Nos.2 to 5 that he would convince his wife/petitioner to see that the case also withdrawn against them and believing the version, they kept quiet, however, she did not withdraw pursuant to the assurance and they were set ex parte and filed Crl.M.P.No.157 of 2015 to set aside the *ex parte* order that was allowed on 13.04.2016 on costs of Rs.2,000/- subject to condition of filing counter in main DVC by next hearing

date and they deposited the costs and at that juncture respondent No.1 approached them of no need to contest and his wife agreed for withdrawal. Respondent Nos.2 and 3 are old age persons and respondent No.4 and his wife/respondent No.5 are at abroad and they are under impression of respondent No.1 as per assurance will convince his wife to withdraw the case and they need not participate and contest the case and suddenly on 16.05.2017 the Protection Officer came to their house along with the order, dated 30.12.2016 and served copy, from which they came to know of the order against them directing to return the gold ornaments and to pay compensation of Rs.1,00,000/- and to accommodate DVC petitioner in a portion of the house, thereby they are chosen to impugn the order by filing the appeal in seeking to condone the delay.

4. The petitioner as respondent No.2 to the present revision failed to attend even served.

5. Heard learned counsel for the petitioners and learned Public Prosecutor, representing the State-1st respondent and perused the said averment and the impugned order of the lower Court saying particularly at para 7 as follows:

“A perusal of the property herein is pending between the family members of Farooq Ali who is the first petitioner herein. This petition is bad for not joining Yaseen Ali as a party. There are allegations against Yaseen Ali that he colluded with his wife i.e., respondent herein. The main contention of petitioners is based on the assurance given by Yaseen Ali, they did not contest the case. The petitioner itself shows that the petitioners

filed an ex parte petition in the trial court which was allowed with certain conditions on 13.04.2016, but the petitioner did not choose to comply those conditions. The DVC was disposed of on 30th December, 2016. Thus, there was a gap of more than 7 months between the dismissal of Crl.MP.No.157/2015 filed by the petitioners to set aside the ex parte order in DVC and the final dispose of the case, obviously petitioners kept quiet. The delay in this case is 113 days. The petitioners were very much aware of the pendency of DVC No.71/2014 and they should have been alert after their petition to set aside the ex parte order dismissed because of non-compliance of conditions imposed by the trial Court. Law does not come to the rescue of this who are delegant in pursuing the case.”

6. No doubt, as can be seen from the dismissal order of the learned Metropolitan Sessions Judge in entertaining the appeal of no grounds to condone the delay of 113 days from the very affidavit petition averments, they are aware of the ex parte order and that was caused set aside on 13.04.2016 on condition and paid the costs and failed to file the counter and failed to appear and contest the matter and allowed the matter without contest knowingly. Thereby there are no grounds to impugn that order, much less to entertain the appeal by condoning the delay of 113 days. However, the fact remains as mentioned in the affidavit of respondent Nos.2 and 3, for respondent Nos.4 and 5 are at abroad, being old, believed the version of their son, no other than the husband of the petitioner of they need not file counter and they need not contest and it is that impression of his submission that influenced them not to contest.

7. Having regard to the above, and the approach required is pragmatic in condoning the delay, the petition for condoning the delay of 113 days is allowed subject to costs of Rs.10,000/- (Rupees ten thousand only) payable by the petitioners/DVC respondents to respondent No.2/DVC petitioner by sending Money Order or Pay Order by sending by registered post and if she failed to take the amount to send the same to the Army Welfare Fund and file proof before the lower Court, within 15 days from the date of receipt of a copy of this order, subject to that the learned appellate Court-cum-Metropolitan Sessions Judge if at all complied entertain the un-numbered appeal, if otherwise in order to number and proceed with.

8. Accordingly, the criminal revision case is allowed.

Miscellaneous petitions pending, if any, shall stand closed.

4th January 2019

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Dr. B. SIVA SANKARA RAO, J