

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.11.2020

Pronounced on : 27.11.2020

CORAM

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.O.P.No.11765 of 2019

A.Narayanamoorthy

.. Petitioner

Versus

1. Poovaragavan
2. Rajamoorthy
3. Arumugam
4. Varalakshmi
5. Mangalakshmi
6. Murugan
7. Natarajan

.. Respondents

Prayer: Petition filed under Section 482 Cr.P.C., to set aside the order passed by the learned Principal Sessions Judge, Puducherry in Cr.M.P.No.250 of 2018 in Un.No.Crl.Rev.Petition of 2018 dated 09.02.2019 and consequently, to allow the condone delay application filed in Cr.M.P.No.250 of 2018 in Un.No.Crl.Rev. Petition of 2018 on the file of the learned Principal Sessions Judge, Puducherry and also to direct the learned Principal Sessions Judge, Puducherry to number the revision petition and dispose in accordance with law.

For Petitioner : Mr.Prakash Adiapadam

For Respondents : Mr.K.Selvarangan

O R D E R

This Criminal Original Petition has been filed seeking the relief to set aside the order dated 09.02.2019 passed in Crl.M.P.No.250 of 2018 in unnumbered Crl. Revision Petition of 2018, on the file of the learned Principal Sessions Judge, Puducherry and consequently, allow the Crl.M.P.No.250 of 2018, which was filed praying to condone the delay of 93 days in filing the Criminal Revision Petition.

2. Heard Mr.Prakash Adiapadam, learned counsel for the petitioner as well Mr.K.Selvarangan, learned counsel for the respondents and perused the materials available on record.

3. The petitioner being the complainant filed a complaint against the respondents herein under Section 156(3) of Cr.P.C, alleging that the respondents had committed an offence under Sections 441, 447, 378, 379, 381, 382, 390, 392, 463, 464, 465, 403, 489A to 489E of IPC. The said complaint filed by the petitioner was assigned with case number as CC. No.961 of 2016 on the file of the learned Judicial Magistrate No.IV at Puducherry and afterwards, after affording an opportunity to the respondents, by order dated 28.06.2017, the learned Judicial Magistrate No.IV, Puducherry, had dismissed the said application.

4. Challenging the same, the petitioner has intended to file a revision. But the same has not been filed within the period of limitation. Therefore, the petitioner / complainant filed Crl.M.P.No.250 of 2018 before the learned Principal Sessions Judge at Puducherry, praying to condone the delay of 93 days in filing the Criminal Revision Petition.

5. The learned Principal Sessions Judge, Puducherry, after affording an opportunity to the respondents by order dated 09.02.2019, had dismissed the said application. Aggrieved over the same, the petitioner is before this Court with this Criminal Original Petition, praying to set aside the order dated 09.02.2019 made in Crl.M.P.No.250 of 2018.

6. The first and foremost contention raised by the learned counsel appearing for the petitioner is that only due to his suffering from chronic disease, the petitioner was not able to prefer the Criminal Revision Petition in time. Further, the delay required to be condoned is only 93 days. But the learned Principal Sessions Judge, Puducherry, without seeing the merits of the revision petition and without mentioning any proper reason, refused to condone the delay. Ultimately, he dismissed the application, which is erroneous in law.

7. On the other hand, learned counsel appearing for the respondents would contend that for the occurrence narrated in the complaint, i.e. now referred in the complaint filed under Section 156 (3) Cr.P.C., already this Court directed the Police Officer to consider the same, by following the Lalita Kumari's case [Lalita Kumari Vs. Government of Uttar Pradesh and others, reported in (2014) 2 SCC 1]. After suppressing the same, now, as a second time, the petitioner preferred the same complaint before the learned Judicial Magistrate No.IV, Puducherry. Only by holding as above, the learned Principal Sessions Judge, Puducherry, had dismissed the said application and therefore, interference of this court is not necessary in the order dated 09.02.2019 passed by the learned Principal Sessions Judge, Puducherry.

8. Now, on considering the rival submissions made by the learned counsel appearing on either side and also on going through the impugned order passed by the learned Principal Sessions Judge, Puducherry, it seems that the application filed for condoning the delay was dismissed on two grounds. The learned Principal Sessions Judge, Puducherry, has specifically observed that in the application filed by the petitioner, he has not stated as to against which order he has preferred the revision petition. Further, for proving the illness of the petitioner, no document has been produced along with the petition. Also, for calculating the delay, the necessary particulars which are required were not furnished and therefore, the petition is liable for dismissal.

9. Though the said reasoning given by the learned Principal Sessions Judge, Puducherry, is found correct, the said defect narrated in the impugned order is nothing but a technical one. If the petition filed for the relief stated above was dismissed with technicality, nobody could attain the real justice. Further, the delay required to be condoned is not a huge one.

10. However, the learned counsel appearing for the respondents would submit that for the same occurrence now narrated by the petitioner, in the complaint filed before the learned Judicial Magistrate No.IV, Puducherry, he approached this Court and obtained a favourable order, for considering the same. However, after enquiry, the police has closed the same as the allegation is civil in nature. Therefore, as second attempt the petitioner is before this Court, only for harassing the respondents and accordingly, the petition filed by the petitioner is not maintainable.

11. Now, on considering the said submissions with the relevant records and on going through the copy of the complaint, filed by the complainant, petitioner has made allegation against the respondents that they being the ex-partners, joined together and broke open the door of the Company and robbed the properties worth about Rs.40 Lakhs along with ICICI cheque book, which consists of 15 leaves, numbering 233991 to 234005, in which some of the cheques had already been signed blank by the complainant for his business purpose as usual and set fire to the said company by keeping some unwanted properties and took over the possession of the said Company with the help of SHO, Thirubuvana Police Station. According to the complaint, the said incident had happened on 02.05.2014 and thereafter, the complaint had been lodged before the SHO, Thirubuvana Police Station on 05.06.2014.

12. Further, in respect to the registration of the case for the above referred offence, the petitioner herein approached this Court by way of filing CrI.O.P.No.23631 of 2014, praying to

register a case on the complaint dated 05.06.2014 and investigate the same. The said original petition filed by the petitioner, was ordered in his favour and thereafter, the SHO, Thirubuvanai Police Station, conducted enquiry on the complaint dated 05.06.2014 and closed the same, as the dispute having by the petitioner with the respondent, is civil in nature. Only thereafter, the petitioner herein filed a complaint before the learned Judicial Magistrate No.IV, Puducherry, under Section 156 (3) of Cr.P.C. At this juncture, it is relevant and useful to see the order dated 02.09.2014 in CrI.OP.No.23631 of 2014, wherein, this Court has observed as follows:

"4. Considering the limited nature of the relief sought for herein, this Court directs the respondent to deal with the complaint received, in accordance with the directions of the Hon'ble Apex Court as stated supra. In the event of the FIR being registered, the same shall be investigated and final report be filed as expeditiously as possible. In the event of the failure on the part of the respondent to exercise statutory duty cast on him, in the light of the directions issued above, it is always open to the petitioner to invoke Sections 154 (3) or 156 (3) Cr.P.C. to work out further remedy in accordance with law."

Therefore, it is made clear, if the respondent fails to exercise his duty, this Court alone has directed the petitioner / complainant to invoke Section 154(3) or 156(3) Cr.P.C., to work out the further remedy in accordance with law.

13. In the said circumstances, upon going through the dismissal order dated 28.06.2017 in Cr.MP No.961 of 2016, which has been passed by the learned Judicial Magistrate No.IV, Puducherry, the same was dismissed after observing that the complainant, in support of his averments, failed to file the relevant documents. Therefore, prima facie case is not made out. In fact, the said observation found in the order dated 28.06.2017 is vague and the said observation given by the learned Judicial Magistrate No.IV, Puducherry, does not amounts to reasoning for dismissing the complaint.

14. Only in the said circumstances, the petitioner herein approached the learned Principal Sessions Judge, Puducherry, for revising the said order. But, due to the reason that the same has not been filed within the period of limitation, he filed an application for condoning the delay. Therefore, the grievance addressed by the petitioner, is only in accordance with the order passed by this Court. No doubt, it is open to the learned Principal Sessions Judge, Puducherry, to decide the issue after perusing the impugned order passed by the learned Judicial Magistrate No.IV, Puducherry. In otherwise, this Court is of the considered opinion that the reasons stated by the learned Principal Sessions Judge, Puducherry, is a technical one and

therefore, the same warrants interference by this Court and accordingly, the Criminal Original Petition is allowed. Consequently, the delay of 93 days in filing the Criminal Revision Petition is condoned. The Principal Sessions Judge, Puducherry is directed to number the Criminal Revision Petition filed by the petitioner and dispose of the same, on merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

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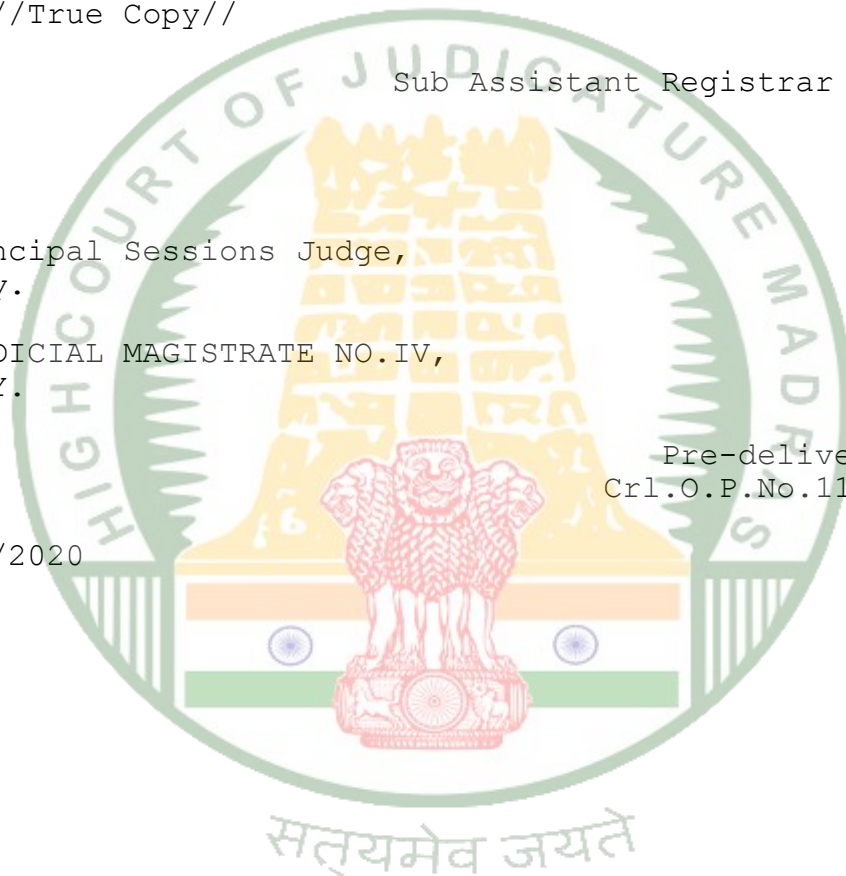
To

1 The Principal Sessions Judge,
Puducherry.

2 THE JUDICIAL MAGISTRATE NO.IV,
PUDUCHERRY.

SR.II CO
SDR 14/12/2020

Pre-delivery order in
Crl.O.P.No.11765 of 2019



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