



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 04.12.2020
CORAM

THE HONOURABLE MRS. JUSTICE R.THARANI

Crl.M.P. (MD) .No.1343 of 2020
in
Crl.R.C. (MD) .No.SR2279 of 2020

Ganesan ... Petitioner/Petitioner

Vs.

1.Subramanian
2.Duraisamy @ Anthony Vinayappan
3.Maharajan
4.Esakki ... Respondents/Respondents

Prayer in Crl.M.P.(MD).No.1343 of 2020 : Petition is filed under Section 5 of Limitation Act, to condone the delay of 1933 days in filing the revision in Crl.R.C.(MD)No.SR2279 of 2020.

Prayer in Crl.R.C. (MD)SR.No.2279 of 2020: Criminal Revision Case is filed under Section 397 r.w. Section 407 of Criminal Procedure Code, to call for the records in Cr.M.P.No.3958 of 2014, dated 09.06.2014 on the file of the learned Judicial Magistrate, Sengottai and to set aside the order and to restore it to the file of the learned Judicial Magistrate, Sengottai, Tenkasi District.

For Petitioner	:	Mr. S.Rajasekar
For Respondents	:	Mr.S.Palanivelayutham for R1 to R3
	:	Mr.K.Navaneetha Raja for R4

O R D E R

This Criminal Miscellaneous Petition has been filed to condone the delay of 1933 days in filing the revision in Crl.R.C.(MD) No.SR2279 of 2020.

2. The petitioner herein filed a petition before the Judicial Magistrate, Sengottai, Tenkasi District, in Cr.M.P.No.3958/2014, under Section 156 Cr.P.C., to register a complaint against the respondents 1 to 4. On 09.06.2014, that petition was dismissed by the learned Magistrate,, for the non-appearance of the petitioner. Against the order of dismissal, the petitioner filed a Criminal Revision Case and there is a delay of 1933 days in filing the revision. The petitioner filed this petition to condone the said



delay.

3. On the side of the petitioner, it is stated that the trial Court counsel failed to appear before the trial Court and that is the reason for the dismissal of the complaint filed by the petitioner. The petitioner filed a copy application but, the entire bundle was misplaced by the trial Court. Regarding the missing of the records, the petitioner has given a representation before the Principal District Judge, on 16.03.2013. Later, the petitioner has given a representation before this Court on 24.05.2016. Since the entire file was misplaced by the Court, the petitioner could not file this revision in time and hence, there was a delay of 1933 days in filing the revision and prayed the petition to be allowed.

4. On the side of the respondents 1 to 3, it is stated that the order was passed on 09.06.2014 and the copy application was filed only on 19.01.2016, i.e. after a lapse of 1 ½ years. Even along with the revision, the petitioner has filed only xerox copies. The petitioner might have filed this revision much earlier with the xerox copies and the reason that the bundle was misplaced is not reasonable, since the petitioner has filed only xerox copies. It is further stated that in paragraph -11 of the affidavit, the petitioner has stated that due to mental stress and work load, the petitioner was not able to meet his counsel, where as, in paragraphs 5 and 6, the petitioner has stated that his counsel colluded with the other side and failed to appear before the trial Court. Each day delay is not properly explained by the petitioner and prayed the petitioner to be dismissed.

5. On the side of the fourth respondent, it is stated that the petitioner was present on 23.05.2014 and he was aware of the next hearing date i.e.27.05.2014. On 27.05.2014 and 03.06.2014, the petitioner was absent. Therefore, the matter was adjourned to 05.06.2014 and on that day also, the petitioner was absent. Hence, the learned Magistrate adjourned the matter 'for orders', to 09.06.2014, with liberty to elicit oral or written arguments by that time. On 09.06.2014, since the petitioner as well as his counsel were not present, the learned Magistrate dismissed the case. Even though the petitioner is claiming that the bundle was misplaced by the trial Court, there is no explanation for the non-appearance of the petitioner. Copy application was filed only on 19.01.2016 and this delay was not explained by the petitioner and hence prayed the petition to be dismissed.

6. It is seen that the case of the petitioner was dismissed on 09.06.2014. The petitioner filed a copy application on 19.01.2016. On the side of the petitioner, it is stated that the petitioner's counsel colluded with the other side and failed to appear for this case. When the dismissal of the case came to the knowledge of the petitioner was not clearly elicited in the petition, why the petitioner has not approached his counsel from 27.05.2014 is not



stated in the petition as the petitioner has not stated anything regarding the date of knowledge of the order, the delay between 09.06.2014 till 19.01.2016 is not properly explained by the petitioner. The delay is 1993 days.

7. On the side of the petitioner, it is stated that the entire bundle was misplaced in the Court. A perusal of the copy application reveals that the copy application was returned by the Magistrate, due to the non-mentioning of the hearing date and not as records not available. There is no document to prove that the bundle was missing.

8. The petitioner gave a representation on 16.03.2016 before the Principal District Judge, regarding the missing of the bundle. Again, he filed a representation before this Court, on 25.04.2016. From 16.03.2016 till 14.06.2017, the petitioner is approaching the Court stating that the bundle is missing. But, when the bundle was traced out by the trial Court, when the petitioner obtained copies of the documents were not stated in the petition.

9. It is seen that the petitioner obtained xerox copy on 20.12.2019 and this petition was filed by the petitioner only on 23.01.2020. The petitioner failed to take any action from 19.12.2014 till 19.01.2016. The petitioner failed to mention the date of knowledge and the petitioner failed to mention, when the bundle was traced out by the Magistrate Court. The petitioner failed to file this petition immediately after getting the xerox copies on 20.12.2019. Each day delay is not properly explained. The delay is 1933 days.

10. In the above circumstances, reasons stated in the petition are not satisfactory. This petition is devoid of merits and hence, this Criminal Miscellaneous Petition is dismissed. Consequently, the Crl.RC.(MD)No.SR2279 of 2020 is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

The Judicial Magistrate,
Sengottai,
Tenkasi District.

WEB COPY

Copy to: The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2)

+1 CC to Mr.T.LAJAPATHI ROY, Advocate SR-24200.

Crl.M.P. (MD) .No.1343 of 2020
in
CRL.RC (MD) .No.SR2279 of 2020
04.12.2020

VR (CO)
CS (31.12.2020) 4P 5C