



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On : 08.12.2020

Delivered On : 23.12.2020

CORAM

WEB COPY

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl. R.C.(MD)No.117 of 2020

Anandaraj

.. Petitioner /Respondent/Accused No.4
Vs.

State Inspector of Police,
District Crime Branch,
Thoothukudi District.
(Crime No.12 of 2017)

.. Respondent/Appellant/Petitioner

Prayer : This criminal revision case is filed under Sections 397 r/w. 401 of Cr.P.C., to set aside the order passed in Cr.M.P.No.3335 of 2019 dated 31.10.2019 in unnumbered Crl.R.C. Of 2019 on the file of the learned Principal Sessions Judge, Thoothukudi.

For Petitioner : Mr.H.Arumugam

For Respondent : Mrs.S.Bharathi

Government Advocate

ORDER

This petition has been filed to set aside the order passed in Cr.M.P.No.3335 of 2019 in unnumbered Crl.R.C. Of 2019 dated 31.10.2019, on the file of the learned Principal Sessions Judge, Thoothukudi.

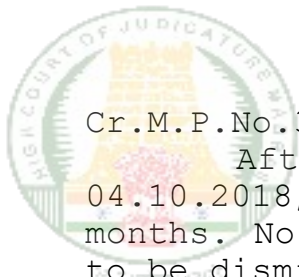
2.The case against the petitioner is that the petitioner and others misappropriated Rs.40,00,000/- (Rupees Forty Lakhs only), which is provident fund amount. The case in Crime No.12 of 2007 was registered by the District Crime Branch, Thoothukudi and the same was taken on file as C.C.No.587 of 2017. The revision petitioner has filed the petition in Crl.M.P.No.485 of 2017 before the Judicial Magistrate No.III, Thoothukudi, to discharge him from the charges in Crime No.12 of 2007, District Crime Branch Police Station in C.C.No.587 of 2017. The petition was allowed by the learned Principal Sessions Judge. Aggrieved by which, the respondent filed a revision before the Principal Sessions Judge with a delay.

3.The brief substance of the petition in Cr.M.P.No.3335 of 2019 is as follows:

The petitioner has to move the file through different channels, which leads to the delay in filing the revision and the delay is not wilful.

4.Brief substance of the counter filed by the respondent in

<https://hcservices.ecourts.gov.in/hcservices/>



Cr.M.P.No.3335 of 2020 is as follows: -

After the respondent was discharged from the charges on 04.10.2018, the petitioner filed the revision only after nine months. No reason was ever stated for the delay and the petition is to be dismissed.

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5. Brief substance of the additional counter filed by the respondent in Cr.M.P.No.3335 of 2020 is as follows: -

Getting certificate copies of documents and getting legal instructions from an advocate cannot be a valid reason for condoning delay. The petitioner has to prove the reason for each day delay and the petitioner has not stated when he filed the copy application, when he received the certificate copies and when he approached the Government advocate for opinion and that when the Government advocate gave the opinion and prayed the petition to be dismissed.

6. After considering both side arguments, the delay excuse petition was allowed by the learned Principal Sessions Judge. Against which, the petitioner preferred this revision case.

7. On the side of the petitioner, it is stated that at the time of filing, the revision petition before the Principal District Judge and only delay excuse petition was filed without an affidavit. After the case was reserved for orders, the learned Principal District Judge reopened the matter for filing affidavit, which is unknown to law. An opportunity for filing an affidavit at a later state of the proceedings was wrongly given to the respondent by the Court.

8. The date of filing of copy application and the date of receiving of the certified copies and the date on which the respondent approached the Government advocate and the date on which the Government advocate gave his opinion were not explained in the petition. The revision petitioner has filed a counter and an additional counter. But the lower Court failed to consider the same and passed a comment that the respondent is no serious objection. In the order passed by the lower Court, it is wrongly stated that the revision petitioner has no serious objection. The revision petitioner is a member of the Diocese. The rival party with a motive to prevent the petitioner to contest the election has falsely impleaded the petitioner in the case, since a person having a criminal case cannot contest the election. The provident fund amount was available in some other account. Even the bishop has given an undertaking that the amount is available in some other account. There is no necessity to allow the delay excuse petition and prayed the impugned order to be set aside.

9. The learned counsel appearing for the petitioner would submit a judgment passed by the Hon'ble Supreme Court in the case of ***Postmaster General and Others v. Living Media India Limited and***

<https://hcservices.ecourts.gov.in/hcservices/>



another reported in **(2012) 3 Supreme Court Cases 563**, wherein it is stated as follows:

"The Government departments are under a special obligation to ensure that they perform their duties with diligence and commitment. Condonation of delay is an exception and should not be used as an anticipated benefit for the government departments. The law shelters everyone under the same light and should not be swirled for the benefit of a few."

10.The learned counsel appearing for the petitioner would submit a judgment passed by the Hon'ble Supreme Court in the case of **State by Public Prosecutor v. Sivasamy and two others** reported in **1991(1)MWN(Cr.)188** , wherein it is stated as follows:

"As rightly pointed out in the counter, limitation is a valuable right that would accrue to a successful party in a litigation and more so to an accused in a criminal case who has been acquitted. For all these reasons, we have no hesitation in holding that the petitioner has miserably failed to explain the delay satisfactorily and as such the petition deserves to be dismissed."

11.The learned counsel appearing for the petitioner would submit a judgment passed by the Hon'ble Supreme Court in the case of **Union of India and others v. Ram Kumar Thakur** reported in **(2009) 1 Supreme Court Cases 122**, wherein it is stated as follows:

"It has been noted by this Court that if even in cases where interim relief is not granted in favour of the applicant and the order is implemented that does not furnish a ground for not entertaining the appeal to be heard on merits (see *Nagar Mahapalika v. State of U.P.*) Similar view was also taken in *Nagesh Datta Shetti v. State of Karnataka*)."

12.The learned counsel appearing for the petitioner would submit a judgment passed by the Delhi High Court in the case of **Mukesh Khanna v. State through C.B.I.** reported in **1995 (2) CLR 580**, wherein it is stated as follows:

"If the I.O. Was transferred to Ahmedabad, he was still working under the respondent and for CBI to plead that it took time to procure the attendance of I.O. For filing of the revision cannot be taken to be a valid ground for condoning the delay. In my considered opinion, the respondent has not explained the delay as warranted by the provisions of Limitation Act."

13.The learned counsel appearing for the petitioner would
<https://hcservices.ecourts.gov.in/hcservices/>



submit a judgment passed by the Allahabad High Court in the case of ***State of Uttar Pradesh v. Vishnu Dutt Shukla*** reported in ***(2017) 2 All Crl. Rulings 2263***, wherein it is stated as follows:

"Mere sending of communication to call upon appropriate authority to file affidavit and to get the documents typed cannot be treated to be sufficient cause for condonation of delay of about ten months by any stretch of imagination."

14.On the side of the revision petitioner, it is stated that the right of the petitioner is affected by the order of the lower Court. Each day delay is not properly explained by the respondent and prayed the impugned order to be set aside.

15.On the side of the respondent, it is stated that the C.S.I. Nazareth Thoothukudi Diocese was bifurcated from C.S.I. Tirunelveli Diocese on 21.10.2003. There are 81 priests and 15 staffs working under C.S.I. Nazareth Thoothukudi Diocese. Provident funds have been collected from the said priests and staffs and the contributed amount towards provident fund has been deposited at the State Bank of India, Thoothukudi Branch. The accused namely Lionel Thiraviyam and Durairaj were functioning as Treasurer and Secretary of the Nazareth Thoothukudi. As per the provident fund rules, the amount should be deposited in the institutions authorized by Central Government based on the resolution of the members of Thoothukudi Nazareth Diocesan Provident fund trust. But with a view to misappropriate the fund, violating the rules, the funds has been withdrawn from the State Bank of India account and was transferred to the General account maintained at the TamilNad Mercantile Bank, Mount Road Branch, Chennai and was encashed by the accused. The accused misappropriated amount to the tune of Rs.40,00,000/- (Rupees Forty Lakhs only). Moreover, the accused have swindled more money collected from the students of B.Ed. College run by the Diocese. There was a delay of 204 days in preferring the revision. The delay was condoned by the learned Principal Sessions Judge, Thoothukudi on condition of payment of Rs.2,000/- and the criminal revision was numbered as Crl.R.C.No.1 of 2020 and is posted for hearing on 18.03.2020. This petition has become infructuous.

16.The allegation against the petitioner is that he misappropriated provident fund amount. The allegation is serious in nature. It is stated that the bishop has given a letter that the amount was available in some other account. There are some other accused in the case. It is seen that the revision filed by the respondent before the learned Principal Sessions Judge, Thoothukudi was numbered. The fund involved is Rs.40,00,000/-. In the interest of justice, an opportunity for the respondent to put forth the case has to be given. The petitioner can raise all his objections in the revision petition in Crl.R.C.No.1 of 2020 pending before the learned Principal District Judge, Tuticorin.



17. In the above circumstances, there is nothing sufficient enough to interfere in the order passed by the trial Court. Hence, this Criminal Revision Cases is dismissed and the order passed in Cr.M.P.No.3335 of 2019 in unnumbered Crl.R.C. Of 2019 dated 31.10.2019, on the file of the learned Principal Sessions Judge, Thoothukudi is confirmed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Mrn

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Principal Sessions Judge,
Thoothukudi.

2.The Inspector of Police,
District Crime Branch,
Thoothukudi District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

The Record Keeper, Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 Copies)

+1 cc to Mr.H.Arumugam ,Advocate, SR No.27283

Crl. R.C.(MD)No.117 of 2020
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mj (CO)

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