



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18.03.2020

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Cr1.RC(MD)No.265 of 2019

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M.Kanniga Mahalakshmi : Petitioner/Petitioner/Petitioner

Vs.

P.Gnanasekaran : Respondent/Respondent/Respondent

Prayer: Criminal Revision filed under sections 397 and 401 of the Code of the Criminal Procedure against the order passed by the Principal Sessions Judge, Madurai, in Cr1.MP No.6574 of 2017 in C.A.-/2018, dated 16.07.2018.

For Petitioner : Mr.V.Manikandan

For Respondent : Mr.D.Senthil

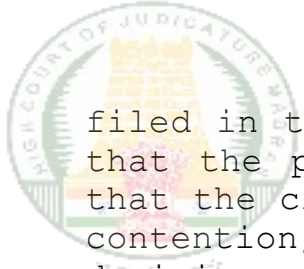
J U D G M E N T

This criminal revision is directed against the order passed by the Principal Sessions Judge, Madurai, in Cr1.MP No.6574 of 2017 in C.A.-/2018, dated 16.07.2018.

2.The petitioner is the complainant in STC No.569 of 2012 on the file of the Judicial Magistrate No.2, Fast Track Court at Magisterial Level, Madurai. The trial court dismissed said case on 30.12.2014. The petitioner informed her counsel to file appeal against the order of dismissal in time and put her signature in the relevant papers in order to file appeal. After few months, when the petitioner approached her counsel, she came to know that her bundle was misplaced. Thereafter, appeal has been preferred along with a petition in Cr1.MP No.6574 of 2017 under section 5 of the Limitation Act to condone the delay of 1035 days in filing the criminal appeal. The said petition was dismissed by the Principal Sessions Judge, Madurai, by order, dated 16.06.2018. Aggrieved by the said order, the petitioner is before this court.

3.Heard both sides and perused the materials available on record.

4.The learned counsel appearing for the petitioner submitted that the petitioner has handed over all the papers to her counsel in order to file the appeal, but the appeal was not



filed in time by the counsel before the first appellate court and that the petitioner is having good case in the appeal and prays that the criminal appeal has to be allowed. In support of the said contention, the learned counsel for the petitioner relied upon the decision reported in the case of **Rafiq and Another Vs. Munshilal and another (AIR 1981 SC 140)** and **Smt. Lachi and others vs. Director of Land Records and others (AIR 1984 SC 41)**. In the above said decisions, the Hon'ble Supreme Court observed as under:-

"What is the fault of the party who having done everything in his power expected of him, would suffer because of default of his advocate..... The problem that agitates us is whether it is proper that a party should suffer for the inaction, deliberate omission, or misdemeanour of his agent.... We cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted."

5. Further, the learned counsel for the petitioner submitted a decision reported in **(1993)1 SCR 794 (Salil Dutta Vs. T.M. & Mc (P) Ltd..** In the above decision, the Hon'ble Apex Court, observed as under:-

"It is true that in certain situations, the Court may, in the interest of justice, set aside a dismissal order or an ex parte decree notwithstanding the negligence and/or misdemeanour of the advocate where it finds that the client was an innocent litigant but there is no such absolute rule that a party can disown its advocate at any time and seek relief. No such absolute immunity can be recognised. Such an absolute rule would make the working of the system extremely difficult."

6. On coming to the instant case on hand, it is seen from the records that the petitioner has presented the papers for filing appeal before the advocate in time. But due to fault on the part of the advocate, the appeal was not filed in time.

7. Keeping in view of the above facts and also the law settled by the authorities referred to above, this court is of the considered view that the impugned order passed by the first appellate court is liable to be set aside and accordingly, it is set aside.

8. In the result, this criminal revision is **allowed on payment of Rs.5,000/- (Rupees Five thousand only) to the Chief Justice Relief Fund**, within a period of three weeks from the date of receipt of a copy of this order, failing which the order of the



first appellate court shall stand restored automatically without reference to this court.

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// True Copy //

Sd/-

Assistant Registrar (Records)

/ /2020

Sub Assistant Registrar(CS)

To,

1.The Principal Sessions Judge,
Madurai.

2.The Judicial Magistrate (FTC), Madurai.

Copy to:

The Section Officer,
Accounts Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.D.SENTHIL, Advocate (SR-12221[F] dated 18/03/2020)

+1 CC to M/s.V.MANIKANDAN, Advocate (SR-12354[F] dated 18/03/2020)

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