



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C (MD) No.647 of 2017

J.Edwin Victor

... Petitioner

Vs

1.R.Retnakumar

2.State of Tamilnadu,
Rep by Public Prosecutor

... Respondents

PRAYER: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to set aside the order made in Crl.M.P.No.77 of 2015 on the file of the Court of Sessions, Kanyakumari District at Nagercoil, dated 08.08.2016.

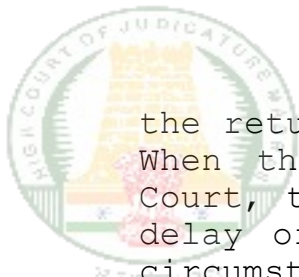
For Petitioner : Mr.C.Sankar Prakash
For R1 : Mr.G.Thalaimutharasu
For R2 : Mr.A.Robinson
Government Advocate (Crl.side)

ORDER

Heard the learned counsel on either side.

2.The revision petitioner is the complainant in C.C.No.438 of 2002 on the file of the Judicial Magistrate No.1, Nagercoil. Service could not be effected for a very long time. Citing the absence of the complainant, probably, the trial Magistrate chose the easy route, and dismissed the complaint for non prosecution under Section 256 of Cr.P.C., The same would operate as acquittal. Therefore, the complainant ought to have filed an appeal challenging the same. Instead, the complainant chose to file the revision case before this Court. The criminal revision case was returned calling upon the petitioner to demonstrate its maintainability. The criminal revision case was also filed on 15.06.2012 with considerable delay, instead of complying with the return and filing a proper appeal. Since the revision case is to be filed within a period of 90 days, the petitioner filed Crl.M.P.No.77 of 2015 to condone the delay of 478 days in filing the petition. The Sessions Judge, vide order dated 08.08.2016, dismissed the petition with the following observations:-

"6.Perused the affidavit of the petitioner and the contention of the counter filed by the first respondent. It is the contention of the respondent that the petition is filed only to drag on the proceedings. If the contention of the petitioner is to be accepted, then the petitioner has to attend



the returns and represent the petitioner before the High court. When the petition was returned by the section of the High Court, this petitioner has approached this Court to condone the delay of 478 days in filing the revision petition. In such circumstances, the explanation offered by the petitioner does not hold good. Therefore, this petition is dismissed as having no merits"

Challenging the same, this criminal revision case came to be filed in the year 2017.

3.I am afraid that I cannot grant any relief to the petitioner herein, though my sympathy may lie on his side. It is not as if the presence of the complainant on 29.12.2010 could have made any difference. It appears that non bailable warrant was issued against the accused on 15.04.2004 and that, there was no progress in the case. Instead of ensuring the enforcement of the non bailable warrant, the Court below had chosen the convenient route of terminating the prosecution by citing the absence of the complainant. Be that as it may, the complainant has to blame himself. Therefore, I cannot fault the order passed by the learned Sessions Judge. Therefore, even while dismissing this revision case, I give liberty to the petitioner to file an appeal challenging the order passed by the trial Magistrate on 29.12.2010. It goes without saying that the delay occasioned in filing the appeal will definitely be taken note of, while considering the petitioner for condoning the delay.

4.With this liberty to the revision petitioner, this criminal revision petition stands dismissed.

Sd/-

Assistant Registrar

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

rmi

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 Sessions Court, Kanyakumari District,
Nagercoil.

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

+1 CC to M/s.C.SANKAR PRAKASH, Advocate (SR-25451[F] dated
14/12/2020)

Cr1.R.C(MD)No.647 of 2017
11.12.2020

MJ(CO)
KK(28.12.2020) 3P 4C