



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
( Criminal Jurisdiction )

Tuesday, the Ninth day of November Two Thousand and Twenty One

PRESENT

**The Hon`ble Mr.Justice S.VAIDYANATHAN**  
**and**  
**The Hon`ble Dr.Justice G.JAYACHANDRAN**

CRL MP(MD) No.9412 of 2021  
IN  
CRL A(MD) SR.No.29994 of 2021

STATE REP BY,  
THE INSPECTOR OF POLICE,  
ERANIEL POLICE STATION, KANYAKUMARI DISTRICT.  
CR.NO.251 OF 2008

REP.BY THE STATE PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT,  
MADURAI ... PETITIONER/APPELLANT/COMPLAINANT

Vs

1 MURUGAN

2 PADMA ... RESPONDENTS/RESPONDENTS/ACCUSED NO.1&2

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to condone the delay of 1239 days in filing the Appeal against the acquittal judgment passed in Sessions Case No.141 of 2008 date 03/08/2016 passed by the Sessions Judge, Kanyakumari District at Nagercoil.

**PRAYER IN CRL.A. (MD) SR.NO.29994 of 2021:**

Pleased to call for the records and to set aside the Acquittal rendered in Judgment dated 03.08.2016 made in Session Case No. 141 of 2008 on the file of the Learned Sessions Judge, Kanyakumari District at Nagercoil by allowing this Criminal Appeal.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of ADDITIONAL PUBLIC PROSECUTOR for the petitioner, the court made the following order:-

The application is filed to condone the delay of 1239 days in filing the appeal against the acquittal of the respondents 1 & 2 / A1 & A2.



2. The brief facts of the case is that based on the First Information Report given by the Station Master of Eraniel Railway Station on 22.02.2008, a case was registered in respect of a suspicious death of one Thanupillai @ Manikanda Prasad @ Sullan Moni.

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3. The police took up the investigation zeroed down to the accused/respondents 1 and 2, who are husband and wife. Based on the circumstantial evidence and the extra-judicial confession of the accused, charges were framed against the first respondent/A1 for the offence punishable under Sections 302 and 201 IPC and against the second respondent/A2 for the offence punishable under Sections 302 r/w 109 and 201 IPC. The trial Court took up the case in S.C.No.141 of 2008.

4. In order to sustain their case, the prosecution examined 22 witnesses, marked 29 Exhibits and 11 material objects. The trial Court however found that the charges are not proved beyond reasonable doubt and acquitted both the accused, vide judgement, dated 03.08.2016. The prosecution has obtained a copy of the judgement on 10.09.2016.

5. The learned Public Prosecutor, Nagercoil, Kanyakumari District opined that, it is a fit case for appeal and his opinion, dated 30.01.2017 was forwarded for further orders from the State. From the affidavit, it appears that the State Public Prosecutor has given his opinion on 20.12.2017. Pursuant to the opinion of the State Public Prosecutor, the Government has also passed a Government Order on 12.01.2018 for the petitioner herein to prefer appeal against the acquittal. Thereafter, there was no steps taken by the petitioner/State herein to prefer the appeal. Only on 21.06.2016, when the present Inspector of Police took charge of the Eraniel Police Station has found that the appeal has not been filed and has taken steps to collect relevant papers to prefer the appeal. But then due to COVID-19 lock-down even he could not pursue the matter further till 06<sup>th</sup> October, 2021. The reason stated for condonation of delay is found in paragraph Nos.2 and 3 of the affidavit filed along with the application and the same is extracted below:

*"2.I submit that in this case, the judgment was passed by the Sessions Judge, Kanyakumari District at Nagercoil in Sessions Case No.141 of 2008 dated 03.04.2018. The certified copy of the judgment was applied on 05.08..2016 and obtained the same on 10.09.2016. I further submit that after obtaining the certified copy of the judgment, an opinion was sought for from Public Prosecutor, Nagercoil, Kanyakumari District and he offered his opinion is fit for appeal on*



30.01.2017. further, the Superintendent of Police, Nagercoil sent the proposal vide Lr.No.C1/51892/2016, dated 17.03.2017 through District Collector, Kanniyakumari District, sent the proposal vide Lr.Rc.No.C2/10576/2017, dated 12.09.2017 to the Director General of Police, Chennai and same was sent to the Deputy Secretary to Government, Home (Cts.VII) Department, Secretariat, Chennai vide for filing an appeal. The Government sent the proposal to the office of the Public Prosecutor, High Court, Madras vide Letter No.71999/Cts.VII/2017-1, dated 24.10.2017 and the same was received by the Public Prosecutor's office, High Court, Madras on 26.10.2017. After perusing the entire records, the Public Prosecutor, High Court, Madras thought that this is a fit case for filing an appeal against acquittal and accordingly, he sent an opinion on 20.12.2017 for issuing Government Order and the same was received by the Public Prosecutor, High Court on 19.01.2018 vide G.O(2D).No.10 dated 12.01.2018.

3.I humbly submit that, after my joining as Inspector of Police, Eraniel Police Station on 21.06.2021, I have immediately took this task, collected all the relevant papers in connection with the filing of the said appeal and appeared before the Learned Public Prosecutor, at the office of the Public Prosecutor situated at Madras High Court Buildings. Due to Covid-a9 lock down, I could not able to reach Chennai for collecting the filing papers in time. On finding the papers to be in order, the learned Public Prosecutor approved the filing papers and made ready the same on 06.10.2021 before the Madras High Court."

6.This Court cannot have two yardsticks one for the State and another for the general public while condoning the delay in resorting to legal recourse. The respondents herein are husband and wife had been found not guilty by the trial Court and they are leading a peaceful life for the past five years. The State, which has not filed the appeal in time cannot take a different view to pursue the matter and disturb the present position.

7.Since the reasons for the enormous delay of 1239 days is not properly explained, eventhough, the learned Additional Public Prosecutor insisted for condoning the delay and dispose the appeal on merits, this Court is not inclined to go further in considering the grounds of appeal, since the delay itself is enormous and unexplained.



8.Hence, this Criminal Miscellaneous Petition(MD).No.9412 of 2021 stands dismissed.

sd/-  
09/11/2021

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/ /2021

Sub-Assistant Registrar (C.S.)  
Madurai Bench of Madras High Court,  
Madurai - 625 023.

TO

- 1 THE SESSIONS JUDGE,  
KANYAKUMARI DISTRICT AT NAGERCOIL.
- 2 THE INSPECTOR OF POLICE  
ERANIEL POLICE STATION,  
KANYAKUMARI DISTRICT.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER  
IN  
CRL MP(MD) No.9412 of 2021  
IN  
CRL A(MD)SR.No.29994 of 2021  
Date :09/11/2021

pjl  
PKP/JM/SAR-3/24.11.2021/4P/4C