



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Criminal Jurisdiction**

Thursday, the Twenty Third day of December Two Thousand and Twenty One

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PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) . No.9817 of 2021

in

CRL RC(MD) .No.765 of 2008

1. Vellaichamy

2. Papa @ Suriyakal ... Petitioners/ Petitioners/Petitioners/
Petitioners/Appellants

Vs

Poornam ... Respondent/Respondent/Respondent/
Respondent/Complainant

Prayer in CRL MP(MD) . No.9817 of 2021:-

Petition filed under Section 397(2) of Cr.P.C. , to condone the delay of 1021 days in filing the Restore Petition in Crl.M.P.No. 5131 of 2018 in Crl.R.C.(MD) No.765 of 2008 on 20/09/2018 on the file of this Honourable court

Prayer in Crl.M.P.No. 5131 of 2018:-

Petition filed under Section 482 of Cr.P.C., To restore the above Criminal Revision Petition in Crl.RC(MD)No. 765/2008 on the file of this Honourable Court and the same was dismissed for non prosecution on 06.06.2018

Prayer in Crl.RC(MD)No. 765/2008:-

Criminal Revision Case is filed under section 397 and r/w 401 of Criminal procedure Code against the conviction and sentence passed in Crl A.No.1 of 2008 dated 29.05.2008 on the file of the The Additional Sessions Judge, Fast Track Court, Pudukkottai modifying the conviction and sentence passed in C.C.No.51 of 1998 ,dt.11.11.2003. On the file of the Judicial Magistrate, Alangudi.

ORDER:- This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Thiru. A.D.Ganesha Moorthy, Advocate for the Petitioner and of Thiru. K.Balasundharam, Advocate for the



respondent, this Court made the following order:

This petition has been filed to condone the delay of 1021 days in filing the restore petition in Crl.M.P.(MD)No.5131 of 2018 in Crl.R.C.(MD)No.765 of 2008, dated 20.09.2018 on the file of this Court.

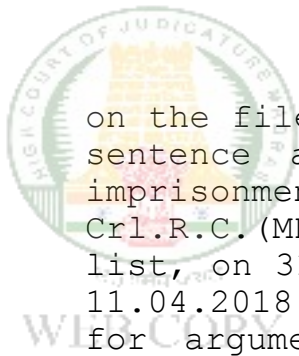
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2. On the side of the petitioners, it is stated that a private complaint was filed before the Judicial Magistrate, Alangudi, in C.C.No.51 of 1998, under Section 494 I.P.C against the petitioners and the same was disposed of on 11.11.2003. A punishment of 2 years rigorous imprisonment and a fine of Rs.1,000/-, in default, to undergo a further period of one year rigorous imprisonment each, was imposed. Against the same, the petitioners preferred an Appeal in C.A.No.1 of 2008 before the Fast Track Court, Pudukottai. That appeal was dismissed, but, the sentence alone was reduced from 2 years to one year rigorous imprisonment. Against the judgment, the petitioners have filed a Criminal Revision in Crl.R.C.(MD)No.765 of 2008 and the petition was dismissed for default on 06.06.2008, since the petitioners' counsel was held up in some other Court, he was not able to make his presence before this Court and the absence is neither wilful nor wanton. The petitioners filed a petition in Crl.M.P.(MD)No.5131 of 2018 for restoration of the Criminal Revision. The restoration petition was also dismissed on 20.09.2018, due to the non appearance of the petitioners' counsel. Since the bundle was misplaced, the petitioners' counsel was not able to attend the Court on that date and hence, the petitioners filed this restoration petition to restore the above said Crl.M.P.(MD)No.5131 of 2018, since the petitioners suffered from fever, they were not able to contact their counsel and there was a delay of 1021 days in filing the restoration petition and prayed the delay to be condoned.

3. On the side of the respondent, it is stated that the petitioners were negligent and lethargic and they have not given any reason for the delay. The petitioners have no valid ground in the revision and they are following the delaying tactics. There is no *bonafide* reason to allow the petition and prayed the petition to be dismissed.

4. A private complaint under Section 494 I.P.C. was filed against the petitioners and the same was taken on file as C.C.No.51 of 1998 on the file of the Judicial Magistrate, Alangudi against the petitioners and two others and the Judicial Magistrate, Alangudi, found the petitioners guilty under Section 494 I.P.C and sentenced them to undergo two years rigorous imprisonment and to pay a fine of Rs.1,000/- in default, to under to one year rigorous imprisonment, each.

5. It is seen that during the pendency of the trial, the third accused died. The petitioners filed an Appeal in C.A.No.1 of 2008,



on the file of the Fast Track Court, Pudukottai. In the appeal, the sentence alone was reduced from 2 years to one year rigorous imprisonment. Against the same, the petitioners filed a revision in Crl.R.C.(MD)No.765 of 2008. Though the matter was taken up in the list, on 31.01.2018, 20.02.2018, 01.03.2018, 15.03.2018, 03.04.2018, 11.04.2018 and 19.04.2018, the petitioners' counsel was not ready for arguments. When the matter was taken up for hearing, on 25.04.2018, there was no representation on the side of the revision petitioners, hence, the matter was listed on 06.06.2018, under the caption "for dismissal". On 06.06.2008 also, there was no representation on the side of the revision petitioners and hence, the Criminal revision Case dismissed for non prosecution.

6. On the side of the petitioners, it is stated that the petitioner has filed a restoration petition in Crl.M.P.(MD)No.5131 of 2018 and that petition was dismissed for non appearance. The petitioners herein have filed a petition for restoration of the restoration petition in Crl.M.P.(MD)No.9817 of 2021. There is a delay of 1021 days in filing the restoration petition.

7. The reason for the delay as stated by the petitioners is that the revision petitioners' counsel was having some other work in some other Court on 06.06.2018 and hence, the case in Crl.R.C.(MD) No.765 of 2008 was dismissed for non prosecution. The reason stated by the petitioners' counsel for the dismissal of Crl.M.P.(MD)No.5131 of 2018 is that the petitioners' counsel was not able to attend the Court, since the bundle was missing. The reason for the present condone delay petition, in Crl.M.P.(MD)No.9817 of 2021, as stated by the petitioners' counsel is that the petitioners suffered from fever and were not able to approach the Court. There are two petitioners in the case when did they fell ill, what was the illness, what are the treatment undergone by them, the period of treatment were not stated in the condone delay petition. There is no possibility of two persons to be ill for a period of 1021 days. No medical documents are filed by the petitioners. The original case was filed in the year 1998.

8. In the above facts and circumstances, the reasons stated by the petitioners are not satisfactory and hence, this Petition is dismissed.

Sd/-

Assistant Registrar (CS II)

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/ /2022

Sub Assistant Registrar(CS)



- TO
1. The Additional Sessions Judge,
Fast Track Court, Pudukkottai
 2. The Judicial Magistrate,
Alangudi, Pudukkottai District
 3. The Additional Public prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER DATED : 23/12/2021

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ORDER
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CRL MP(MD). No.9817 of 2021
in
CRL RC(MD). No.765 of 2008

Giving direction and etc.
as stated within.

MGJ(28.01.2022) 4P 4C