



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.03.2021

Pronounced on : 24.03.2021

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

CRL.R.C.(MD).138 of 2017

and

CRL.M.P.(MD)No.1381 of 2017

G.Babulal : Petitioner / Appellant

Vs.

1.Jeevaraj H. Raj Prohith

2.Court Staffs Judicial

Magistrate No.II Court Madurai. : Respondents / Complainants

PRAYER : Criminal Revision has been filed under Section 397 r/w 401 of Cr.P.C, to call for the records and allow the revision petition and set aside the order passed by the Principal District and Sessions Judge, Madurai in Crl.M.P. No.1167 of 2014, dated 10.01.2017.

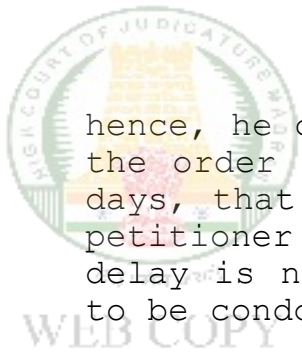
For Petitioner : No Appearance

For Respondents : Mr.T.K.Gopalan

ORDER

The Criminal Revision Case is directed against the order passed in Crl.M.P.No.1167 of 2014, dated 10.01.2017 on the file of the Principal District and Sessions Court, Madurai, dismissing the petition to condone the delay in filing the appeal against the order passed in Cr.M.P.No.1955 of 2012, dated 05.09.2012 on the file of the Court of Judicial Magistrate No.I, Fast Track Court, Madurai.

2.The case of the revision petitioner is that he filed a complaint under Section 340 of Cr.P.C before the Judicial Magistrate No.II, Madurai against the respondent in respect of commission of forgery by putting the Court seal on the face of the cheque in dispute in order to conceal the material alteration done in the figure, in the custody of the Court for the trial in S.T.C.No.2119 of 2005, that after issuance of notice in the said petition to the respondents, the case was transferred to the file of the Court of Judicial Magistrate No.I, Fast Track Court, Madurai, that since the enquiry in the petition filed under Section 340 of Cr.P.C, is to be conducted before the Court in which the offence is committed, he filed a memo to send his complaint filed under Section 340 of Cr.P.C to the Court of the Judicial Magistrate No.II, Madurai, that the Judicial Magistrate No.I, Madurai, without conducting any enquiry on the petition, dismissed the same on 05.09.2012, that he applied for order copy on 10.09.2012 and obtained the same on 12.09.2012, that the order copy was misplaced by him while shifted his residence and



hence, he could not file the appeal in time, that he had traced out the order copy and filed the criminal appeal with the delay of 497 days, that the delay caused is neither willful nor wanton, that the petitioner will be put to irreparable loss and hardship, if the delay is not condoned and that therefore, the delay of 492 days is to be condoned.

3.It is evident from the records that the first respondent has filed a counter statement opposing the said petition and further stated that the reasons given for the delay in filing the appeal is not acceptable and the same is false, that the petitioner ought to have obtained another copy of the order and file the appeal in time and that therefore, the above petition is liable to be dismissed.

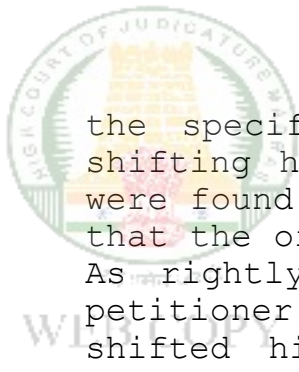
4.The learned Sessions Judge, on pursuing the records and on hearing both sides, has passed the impugned order dismissing the said petition on 10.01.2017. Aggrieved by the said order, the petitioner has come forward with the present revision.

5. When the matter was taken up for hearing on 06.01.2021, there was no representation on both sides and on the subsequent four hearings, there was no representation for the petitioner. Since the revision petition is pending from 2017 and as there was no representation for the revision petitioner for the past five hearings, this Court decided to hear the other side and to pass orders on merits.

6.Whether the impugned order passed in Crl.M.P.No.1167 of 2014, dated 10.01.2017 on the file of the learned Principal District and Sessions Judge, Madurai, is liable to be set aside ? is the point for consideration.

7.In the revision memorandum, it is stated that the learned District Judge ought to have appreciated the reasons given by the petitioner, that the entire case bundle was misplaced with the other case bundles while shifting his residence to the Rajasthan, that the same was traced out after great efforts and filed the criminal appeal, that the learned District Judge has not appreciated the fact that the revision petitioner after the dismissal of the petition had taken immediate action to get the copy of the order so as to file the criminal appeal, that the learned District Judge erred in holding that the petitioner can very well obtain another certified order copy, as the entire case bundle was missing, that the District Judge has failed to note that the respondent with the help of Court staffs committed forgery and that the District Judge has failed to appreciate the sufficient cause adduced by the petitioner.

8.The revision petitioner, in the grounds of revision, has taken a stand that the respondent might have stealthily removed the order copy from the Court case bundle. As already pointed out, it is



the specific case of the revision petitioner that while he was shifting his residence, the case bundle along with the order copy were found missing and it is not the case of the revision petitioner that the order copy in the Court case bundle was also found missing. As rightly observed by the learned District Judge, the revision petitioner has not adduced any iota evidence to show that he had shifted his residence to Rajasthan. In the affidavit filed in support of the petition to condone the delay, he has not whispered anywhere that he had shifted his residence to Rajasthan, but only in the revision memorandum, he has taken such a plea. No doubt, the learned District Judge had commented that the revision petitioner, after missing of the order copy, ought to have obtained another order copy and filed the appeal.

9. In the revision memorandum, the revision petitioner has stated that since the entire case bundle was missing, he was not in a position to file the appeal, after obtaining another copy of the order. As rightly contended by the learned counsel for the respondent, if the revision petitioner was really interested in preferring appeal, he should have applied the copies of the order as well as the other required documents from the Court itself. Moreover, the revision petitioner has not furnished any particulars, when he shifted his residence to Rajasthan, when the order copy was found missing and when the same was traced out. Except the shifting of his residence, the revision petitioner has not offered any other reason or explanation for the delay.

10. It is pertinent to mention that the delay occurred is for 492 days. No doubt, the delay is an inordinate one and no acceptable reason or explanation is canvassed for the delay occurred. Considering the above, the decision of the learned District Judge in dismissing the petition cannot be found fault with and I do not find any infirmity in the order impugned. Hence, this Court decides that the above revision, which is devoid of merits, is liable to be dismissed.

11. In the result, this Criminal Revision case is dismissed and the order passed by the Principal District and Sessions Judge, Madurai in Crl.M.P. No.1167 of 2014, dated 10.01.2017, is confirmed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

1.The Principal District Sessions Judge,
Madurai.

2.The Section Officer,
Criminal Section, (2C)
Madurai Bench of Madras High Court,
Madurai.

CRL.R.C. (MD) .138 of 2017
24.03.2021

SGS (CO)
KB(08.04.2021) 4P 4C