



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.03.2021

Pronounced on : 30.03.2021

WEB COPY

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THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.RC (MD) .No. 766 of 2017

V.S. Chandrasekaran : Petitioner / Appellant

Vs.

1.C.V.Rambabu
2.C.R. Lalitha
3.Mahalakshmi
4.Ethirajan
5.K.G. Vasanthi
6.K.R.Ganeshbabu
7.State through
Inspector of Police,
Madurai.

(Crime No.860 of 2003)

: Respondents / Respondents

PRAYER:- Criminal Revision Case filed under Section 397 r/w. 401 Cr.P.C., against the order dated 13.07.2017 made in Cr.M.P.No.5326 of 2016 on the file of the learned Principal District and Sessions Court, Madurai in dismissing the petition to condone the delay in filing the criminal appeal against the Judgment made in C.C.No.436 of 2004 on the file of the Judicial Magistrate No.IV, Madurai, dated 31.12.2013.

For petitioner : Mr. T. Antony Arulraj
For R1 to R6 : Mr. R. Gandhi
For R7 : Mrs.S.E. Veronica Vincent
Government Advocate (Crl. Side)

ORDER

This Criminal Revision is directed against the order passed in Crl.M.P.No.5326 of 2016, dated 13.07.2017 on the file of the Principal District and Sessions court, Madurai, dismissing the petition to condone the delay in filing the Criminal Appeal, challenging the Judgment passed in C.C.No.436 of 2004, dated 31.12.2013, on the file of the court of the Judicial Magistrate No.IV, Madurai.



2. One V.C. Jayanthi, wife of the revision Petitioner has filed a petition under Section 156(3) Cr.P.C., against the respondents 1 to 6 seeking a direction to register the case and for investigation, before the Court of Judicial Magistrate No.IV, Madurai and as per the orders of the learned Judicial Magistrate, the First Information Report came to registered in Crime No. 860 of 2003 on the file of the 7th respondent Police for the offences under Sections 109, 420, 406, 468, 477 r/w. 120(b) IPC against the respondents 1 to 6.

3. It is not in dispute that the 7th respondent police after investigation, has filed a final report and the same was taken on file in C.C.No. 436 of 2004, on the file of the Court of Judicial Magistrate No.IV, Madurai. It is also not in dispute that the learned Magistrate, after conducting trial, has passed a Judgment on 31.12.2013, by holding that the respondents 1 to 6 were not guilty, acquitting them under Section 248(1) Cr.P.C., Since the defacto complainant Jayanthi had died in the meanwhile, her husband, the revision petitioner has filed an appeal before this Court along with a petition to condone the delay of 85 days in preferring the appeal in M.P(MD).No. 1 of 2015 in CrI.O.P(MD). Sr.No. 17336 of 2014 and that since the appeal against the acquittal shall only lie before the Court of Sessions, the revision petitioner has not pressed his petition and that therefore, the petition was ordered to be dismissed as not pressed with liberty to exclude the time spent before this Court while computing the period of limitation for the appeal before the Sessions Court. It is also not in dispute that thereafter, the revision petitioner has preferred an appeal before the Principal District and Sessions Court, Madurai along with an application in Cr.M.P.No. 5326 of 2016 to condone the delay of 364 days in filing the appeal. The respondents 1 to 6 have filed a counter objecting to condone the delay in filing the appeal and prayed for dismissal. The learned Principal Sessions Judge, Madurai, after conducting enquiry, has passed the impugned order on 13.07.2017 dismissing the petition. Aggrieved by the said order, the revision petitioner has come forward with the present revision.

4. Whether the impugned order dated 13.07.2017 made in Cr.M.P.No.5326 of 2016 on the file of the learned Principal District and Sessions Court, Madurai in dismissing the petition to condone the delay in filing the criminal appeal against the Judgment made in C.C.No.436 of 2004, on the file of the Judicial Magistrate No.IV, Madurai, dated 31.12.2013 is liable to be set aside? is the point for consideration.



5. The main reasons assigned for the delay are that he went to Kuala Lumpur on 29.07.2015 and returned on 10.06.2016 and that thereafter, he was taking treatment for back ache from 15.06.2016 to 06.10.2016. It is further case of the revision petitioner that he could not contact and inform his counsel about his travel to India, that he was able to contact his counsel on 17.10.2016, that the appeal along with other records were filed before this Court only on 19.10.2016 and that therefore, the delay of 364 days on filing the appeal is to be condoned.

6. The Crl.O.P in SR stage filed before this Court on 06.06.2014, the petition to condone the delay in filing the appeal was dismissed by this Court on 02.07.2015. As per the orders of this Court, the time spent before the High Court between 06.06.2014 and 02.07.2015 was ordered to be excluded while computing the period of limitation at the time of preferring the appeal before the Sessions Court.

7. No doubt, the revision petitioner has alleged that he went to Kuala Lumpur on 29.07.2015 and returned on 10.06.2016 and produced a copy of his passport. The learned Principal Sessions Judge has observed that it is evident from Ex.P1 that the petitioner has taken a ticket to Kuala Lumpur for a trip from Thiruchirapalli on 29.06.2015 and for return on 26.08.2015 and another ticket, dated 10.01.2016. According to the revision petitioner, since he was in abroad he could not contact his counsel to file the appeal. As rightly observed by the learned Sessions Judge, there was no entry in the passport copy produced as to when the revision petitioner went to Kuala Lumpur. As already pointed out, the petitioner has also alleged that he has been taking treatment from 15.06.2016 to 06.10.20216 for his back ache. The learned Judge has observed that the revision petitioner has not filed any discharge summary nor he pleaded that the petitioner was taking inpatient treatment. As rightly contended by the learned Judge, the revision petitioner has not produced any materials to show that he was taking treatment for the period between 15.06.2016 and 06.10.2016.

8. As already pointed out, though the petition to condone the delay was dismissed by this Court on 2.07.2015, there was no explanation for the period between 03.07.2015 and 29.07.2015, the date on which he went to Kuala Lumpur. Similarly, after returning from Kuala Lumpur on 10.06.2016 he has not offered any reason or explanation for the delay between his arrival till 15.06.2016, the date on which he suffered illness. Similarly, there was no explanation offered for the period between 06.10.2016 the date of his recovery till 19.10.2016, the date on which the appeal and the delay condonation petition came to be filed.



9. It is pertinent to mention that the original defacto complainant is none other than the close relatives of the respondents 1 to 6. It is not in dispute that the first respondent is the brother; the third respondent is the mother; the 5th respondent is the sister of the defacto complainant V. Jayanthi, that the second respondent is the wife of the first respondent; the fourth respondent is the brother-in-law of the first respondent and that the sixth respondent is the husband of the fifth respondent. As rightly observed by the learned trial Judge, the petitioner has not explained the reasons for the delay properly and the reasons stated by him are not satisfactory. Though the revision petitioner has given some reason for two spell period, he has not chosen to give any reason for the remaining period. As already pointed out, even for the reasons assigned, he has not produced any satisfactory evidence or material to substantiate the same.

10. Considering the above, the decision of the learned Sessions Judge in dismissing the petition cannot be found fault with and consequently, this Court decides that the revision is devoid of merits and the same is liable to be dismissed and the above point is answered accordingly.

11. In the result, the Criminal Revision Case is dismissed.

Sd/-

Assistant Registrar(CRL SIDE)

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/ /2021

Sub Assistant Registrar(CS)

trp

TO

- 1.The Principal District and Sessions Judge, Madurai.
- 2.The Judicial Magistrate No.IV, Madurai.
- 3.The Additional Chief Judicial Magistrate, Madurai.

+1 CC to M/s.R.GANDHI, Advocate (SR-14466[F] dated 30/03/2021)

+1 CC to M/s.T.ANTONY ARUL RAJ, Advocate (SR-14615[F] dated 31/03/2021)

order made in
CRL.RC(MD).No. 766 of 2017

30.03.2021

SGS (CO)

TR(22.04.2021) 4P 6C