



Crl.M.P.No.1898 of 2022
and
Crl.R.C.No.19 of 2013

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :20.06.2022

Pronounced on :23.06.2022

CORAM:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

**Crl.M.P.No.1898 of 2022 &
Crl.R.C.No.19 of 2013**

Crl.M.P.No.1898 of 2022:

Palanivel

.. Petitioner

/versus/

1.Govindaraj
2.Rajasekar
3.Shanthi
4.State of Tamil Nadu
Rep.by the Sub Inspector of Police,
District Crime Branch,
Dharmapuri.
(Crime No.18 of 2003)

.. Respondents

Prayer: Criminal Miscellaneous Petition has been filed under Section 482 of Cr.P.C., to condone the delay of 549 days in filing a petition to restore Crl.R.C.No.19 of 2013 on the file of this Hon'ble High Court dismissed on 14.08.2014 for non-prosecution.



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For Petitioner :Mr.G.Ethirajulu

For Respondents :Mr.T.N.Muralimoghan for R1

No appearance for R2 and R3

Mr.N.S.Suganthan, GA for R4

Crl.R.C.No.19 of 2013:

Palanivel

.. Petitioner

/versus/

1.Govindaraj

2.Rajasekar

3.Shanthi

4.State of Tamil Nadu

Rep.by the Sub Inspector of Police,

District Crime Branch,

Dharmapuri.

(Crime No.18 of 2003)

.. Respondents

Prayer: Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C, against the judgment of acquittal dated 29.06.2012 made in C.C.No.130 of 2004 on the file of the Judicial Magistrate No.I, Krishnagiri and prays to set aside the same.

For Petitioner :Mr.G.Ethirajulu

For Respondents :Mr.T.N.Muralimoghan for R1

No appearance for R2 and R3

Mr.N.S.Suganthan, GA for R4

ORDER



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2. On the complaint given by one Palanivel (the petitioner herein) the District Crime Branch, Dharmapuri, registered a case in Crime No.18/2003 under Section 420 IPC against Govindaraj (1st respondent), Rajasekaran (2nd respondent) and Shanthi (3rd Respondent). In the complaint, it is stated that the first respondent promised to get the post of Assistant Public Relation Officer in Tamil Nadu Government and believing his words to get the post of Assistant Public Relation Officer for his wife, the first respondent initially received Rs.1,50,000/- and during the year 2002, he gave another Rs.1,50,000/-. The first respondent could not arrange for job as he promised. Therefore, the petitioner demanded his money back. The first respondent repaid Rs.90,000/- only and failed to return the balance amount. After his complaint to the Superintendent of Police, Krishnagiri, Govindaraj (the first respondent) executed a sale deed in favour of the defacto complainant in respect of



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92 cents land worth about Rs.80,000/-.

3. Similar allegations from Tr.Mani (PW-4) that the first respondent received a total sum of Rs.78,600/- in three instalments promising to get Meter Reader Job in Electricity Department and from Palanisamy (PW-8) alleging the accused persons received Rs.2 lakhs from him (PW-8) promising job in Forest Department and cheated him, this came to light in the course of investigation. Final Report filed by the Investigating Officer-Ramasamy (PW-11) stating, respondents 1 to 3 herein had received money from PW-1, PW-4 and PW-8 promising job but, failed in their promise. For the money received, they have given receipts. The cheque for Rs.1,00,000/- issued to PW-8 returned without fund. The third respondent given receipt to PW-8 acknowledging the receipt of Rs.1,00,000/- from PW-8. The second respondent gave receipt acknowledging the receipt of Rs.3,00,000/- from PW-1. In these receipts, the first respondent had signed as witness.

4. Before the trial Court to prove the charge framed against the



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accused 1 to 3 under Section 420 IPC, the prosecution has examined 11 witnesses and marked 15 exhibits. The trial Court on considering the evidence held that the contradiction in the evidence regarding the nature of transaction creates doubt about the prosecution case. The receipts Ex.P-3 to Ex.P-6, and Ex.P-10 only indicate, the money was received as loan and not for securing job. These were obtained from the accused, after the complaint given to the police. Further, in favour of the defacto complainant, 92 cents of land has been transferred by the accused and for the said transfer of property, PW-1 has admitted that he has not paid any separate consideration to the vendor. Therefore, extended the benefit of doubt to the accused and acquitted them of the charge under Section 420 IPC.

5. The defacto complainant has filed revision petition before the High Court, being aggrieved by the order of acquittal and the same was numbered in Crl.R.C.No.19/2013. Neither the State nor the other two alleged victims of crime had filed any appeal or revision against the order passed by the trial Court.

6. When the revision petition was listed for final hearing on



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10/08/2018, there was no representation for the petitioner. This Court adjourned the case recording, “No representation for the petitioner. Post the matter on 14/08/2018 under the caption ‘For Dismissal’”. Again, when the case was called on 14/08/2018, there was no appearance for the petitioner. Recording the same, the revision petition was dismissed for non-prosecution.

7. The said order of dismissal is sought to be set aside and revision petition to be restored for disposal on merits. In filing the restoration petition, there is a delay of 549 days. Hence, the delay is sought to be condoned.

8. The petitioner in the affidavit filed in support of the petition to condone the delay has stated that, aggrieved by the order of acquittal in C.C.No.130/2004 dated 29/06/2012, he preferred revision Crl.R.C.No.19/2013 before the High Court, Madras. The case was looked after by the Junior Counsel on record. He was called by the Inspector of Police, Barur Police Station on 27/02/2020, in connection with the complaint given by the first respondent (Govindaraj) regarding a



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property which is the subject matter of O.S.No.95/2003 on the file of District Munsif Court, Pochampalli. Only then he came to know about the dismissal of the revision petition on 14/08/2018. Immediately, he contacted his counsel and came to know that the Junior Counsel on record by over sight missed to note the listing of the case twice. Due to his ailment, he could not meet the counsel in the month of March, 2020 immediately. Thereafter, the lock-down was imposed and after relaxation of Covid restriction, he has filed the petition for restoration with delay.

9. The alleged occurrence which took place in the year 2001-2002, PW-1 had given a written complaint(Ex.P1) on 22.09.2003. The trial Court considering the fact that the receipt relied by the defacto complainant for payment of Rs.3,00,000/- marked as Ex.P3 was infact issued by the second accused (Rajasekar) and not by the first accused (Govindaraj). Further, in connection with this transaction, the defacto complainant had admitted that he has got sale deed (Ex.P2) in respect of the property extending 92 cents for value of Rs.1,00,000/- in his favour and got it duly registered in his favour on 21.07.2003. At the same time, he has also received back Rs.90,000/- from the said Rajasekar through



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one Shanthi, the third accused.

10. The case of the prosecution disbelieved by the prosecution in view of the contradiction and rendered judgment of acquittal on 26.06.2012 being a person aggrieved, the petitioner herein ought to have filed an appeal under Section 372 of Cr.P.C. as amended by Act 5 of 2009. However, he has chosen to file revision under Section 397 r/w 401 of Cr.P.C. but has not pursued the matter and allowed the suit to go for default on 14.08.2018.

11. In the affidavit filed in support of the petition to condone the delay, it is stated that the dismissal order dated 14.08.2018 came to knowledge of the Petitioner only on 27.02.2020 and thereafter also he has not filed any petition to restore the revision immediately. The petitioner was filed before this Court only on 6th day of November 2020. The petitioner's poor health condition and Covid lock-down was the reason for the said delay. However, in the counter filed by respondents 1 to 3 they have stated that the petitioner know about the dismissal soon after its dismissal, he allowed the revision to go for default. Knowingly



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well it has no merit. Having by force taken a property worth several crores and duress with the help of police, the petitioner is not satisfied but also want to harass the respondents by filing this petition. Further, he would state that the revision itself is not maintainable in view of proviso to Section 372 of Cr.P.C. The petitioner wrongly chosen the forum for his convenience and after dismissal of the revision, belatedly seek restoration of his revision petition and convert it as appeal.

12. This Court on perusing the records finds that the case of the prosecution has not been proved before the trial Court and the trial Court adduced the reasons for acquitting the accused. Now looking at the condone delay petition, the reasons for inordinate delay of more than a year not properly explained. A lock-down in view of Covid had no way prevented the petitioner herein to file petition for restoration immediately. The order of dismissal is dated 14.08.2018. Whereas the lock-down was announced only in the month of March 2020 and even then, the Court was functioning all during the lock-down period with certain restrictions. Presenting the restoration petition through on-line was always available to the petitioner, which he has not chosen to



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13. For the said reasons, this Court finds that respondents 1 to 3 cannot be harassed, having proved their innocence before the trial Court. Condoning the unexplained inordinate delay of 549 days and restoration of revision filed by the defacto complainant before the wrong forum will put the respondents undue hardship. Therefore, this Criminal Miscellaneous Petition to condone the delay is dismissed. Consequently, the dismissal order of the Criminal Revision Case on 14.08.2014 stands good.

23.06.2022

ari
Index:yes

To:

- 1.The Judicial Magistrate No.1, Krishnagiri.
- 2.The Sub Inspector of Police, District Crime Branch, Dharmapuri.
- 3.The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN,J.
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delivery Order made in
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