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Crl.RC.No.1486 of 2022



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.11.2022

Coram:

THE HONOURABLE **MR. JUSTICE P.VELMURUGAN**

Criminal Revision Case No.1486 of 2022 &  
Crl.M.P.No.16944 of 2022

1.Thanam

2.Sumathi

... Petitioners

Vs.

The Inspector of Police,  
Attur Police Station  
Salem District

... Respondent

**Prayer:** Criminal Revision filed under Section 397 read with 401 of Criminal Procedure Code, praying to set aside the order dated 30.09.2022 made in C.M.P.No.94 of 2022 in C.A.No.59 of 2022, on the file of the 1<sup>st</sup> Additional District and Session Judge, Salem.

For Petitioner : Mr.S.Muthukrishnan

For Respondents : Mr.S.Sugendran APP

### **ORDER**

The Criminal Revision Petition has been filed by the legal heir of A1



against the order of the Court below. The petitioners are the wife and daughter of A1 respectively.

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2. The husband of the 1<sup>st</sup> petitioner and father of the 2<sup>nd</sup> petitioner was working as Office Assistant in Attur Fast Track Judicial Magistrate Court and during 2014, a complaint was lodged against the husband of the 1<sup>st</sup> petitioner before the respondent Police for the alleged offence under Section 457, 380, 381 r/w 34 IPC and the case was charge sheeted against the husband of the 1<sup>st</sup> petitioner and 3 others and trial was conducted before the Judicial Magistrate No-2, Salem in C.C.No.386 of 2014. The Judicial Magistrate by order dated 19.08.2020, acquitted A3 and convicted the husband of the 1<sup>st</sup> petitioner and 2 others. The Principal District Judge, Salem permitted the husband of the 1<sup>st</sup> petitioner to retire from service on superannuation on 29.04.2016. The husband of the 1<sup>st</sup> petitioner filed an appeal before the District and Session Court, Salem and the same was transferred to the 1<sup>st</sup> Addl., District and Session Court, Salem in Criminal Appeal No.59 of 2020. Pending appeal, the husband of the 1<sup>st</sup> petitioner died on 07.05.2022 and the charge against A1 was abated. However, as per the proviso to Section 394(2) Cr.P.C., the legal heirs want to continue the



appeal and therefore, the petitioners filed a petition in C.M.P.No.94 of 2022, seeking to permit them to continue the appeal along with condone delay petition. The Court below dismissed the petition, against which the present Criminal Revision has been filed.

3. The learned counsel appearing for the petitioner would submit that there is no bar under Section 394(2) Cr.P.C., for filing condone delay petition by the legal heirs of the deceased and therefore, the legal heirs has the filed C.M.P.No.94 of 2022, but however, no separate petition has been filed by invoking Section 5 of the Limitation Act to condone the delay of 69 days. Therefore the learned counsel would submit that the said mistake was happened inadvertently by the learned counsel appearing before the lower Court and one more opportunity may be given.

4. The learned Additional Public Prosecutor would submit that the charge against the accused/A1 was abated and the legal heirs of the deceased want to continue the appeal, they have to invoke under Section 394(2) Cr.P.C., and obtain the leave from the Court to continue the appeal provided that they have to file a separate petition within 30 days and in this case no



separate petition has been filed to condone the delay in filing the petition.

Therefore, the learned Additional Public Prosecutor would submit that there is no perversity in the order passed by the Court below and the revision case is liable to be dismissed.

4. Heard the learned counsel for the parties and perused the materials on record.

5. Admittedly, in the case in C.C.No.386 of 2014, the A-1/husband of the 1<sup>st</sup> petitioner was convicted, against which A1 preferred an appeal in C.A.No.59 of 2020 before the Court below. During pendency of the appeal, A1 died and therefore, the legal heirs of the deceased/the petitioners herein filed a petition in the said appeal before the Sessions Court under Section 394(2) Cr.P.C., to grant leave of the appellate Court to continue the appeal. Since the petition was not filed within 30 days, the Appellate Court dismissed the case.

6. The learned counsel appearing for the petitioners pointed out that the petitioners have filed a petition along with an affidavit under Section



394(2) Cr.PC., and therefore, this Court on 10.11.2022, directed the Registry to call for the records and also get a report as to whether any petition was filed to condone the delay along with CrI.M.P.No.94 of 2022 from the Court below.

7. On a perusal of the report received from the Court below, it is seen that there is no separate petition filed to condone the delay of 69 days in filing the petition under Section 394(2) Cr.P.C. Even in the certified copy of the order produced by the learned counsel for the petitioners it is seen that there is no separate petition filed by the petitioner invoking Section 5 of the Limitation Act, 1963 to condone the delay of 69 days.

8. Therefore, it is clear that the learned counsel for the petitioners before the Court below could not have verified whether along with the petition under Section 394(2) Cr.P.C., a petition under Section 5 of the Limitation Act was annexed with or not. Due to the mistake committed by the learned counsel for the petitioner before the Court below, the party should not be affected and if one more opportunity be granted, ends of justice would be met, and hence, this Court is inclined to grant one more



opportunity to the petitioners and the order of the Court below is hereby set aside. However, the petitioner is at liberty to file a fresh petition under Section 5 of the Limitation Act and in case, the petitioners file a petition under Section 5 of the Limitation Act, the Court below is directed to consider the same and pass orders on merits and in accordance with law, uninfluenced by any of the observations made in this order .

With above direction, the Criminal Revision is allowed. Consequently, connected Miscellaneous Petition is closed.

14.11.2022

Index :Yes/No  
Internet:Yes/No  
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**Note: Issue order copy on 16.11.2022**



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To

- 1.The 1<sup>st</sup> Additional District and Session Court, Salem.
- 2.The Inspector of Police,  
Attur Police Station  
Salem District
- 3.The Additional Public Prosecutor, Madras High Court



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**P.VELMURUGAN,J.**

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