



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Wednesday, the Ninth day of March Two Thousand and Twenty Two

PRESENT

The Hon`ble Mr.Justice G.K.ILANTHIRAIYAN

Crl.M.P.(MD) No.271 of 2021
in
Crl.A.(MD) SR.No.1188 of 2021

SURESH

... PETITIONER/ COMPLAINANT

Vs

B.A.MURUGANANTHAM

... RESPONDENT/ RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Condone the delay of 1981 days in filing the special Leave petition for preferring this Crl.Appeal.

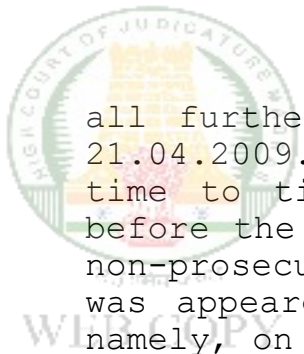
Prayer in Crl.A.(MD) SR.No.1188 of 2021:

To set aside the order passed in S.T.C.No.332 of 2009 dated 01.03.2010 on the file of the Judicial Magistrate, Uthamapalayam and restore the appellant's Complainant.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.P.SAMUEL GUNASINGH, Advocate for the petitioner and of MR.B.A.MURUGANANTHAM, Advocate on behalf of the Respondent, the court made the following order:-

This petition has been filed to condone the delay of 1981 days in filing the leave petition to file a criminal appeal as against the dismissal of the complaint lodged for the offence punishable under Section 138 of Negotiable Instruments Act.

2.The petitioner is the complainant. The respondent is the accused. The petitioner filed the complaint alleging that the respondent borrowed a sum of Rs.3,00,000/- and in order to repay the same, he issued a cheque and it was presented for collection. However, it was returned as "insufficient funds". After causing statutory notice, the petitioner lodged a complaint and the same has been taken cognizance in S.T.C.No.332 of 2009. On receipt of summons, the respondent has filed a quash petition before this Court in Crl.A.(MD) SR.No.1497 of 2009 and this Court granted interim stay of



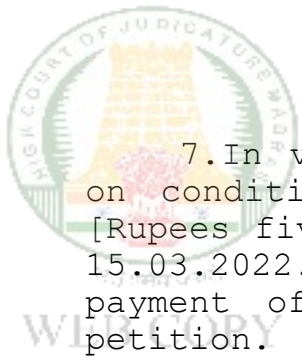
all further proceedings in S.T.C.No.332 of 2009, by order, dated 21.04.2009. Therefore, the trial Court adjourned the matter from time to time and on 01.03.2010, the petitioner failed to appear before the trial Court and as such, the complaint was dismissed for non-prosecution and the respondent was acquitted. The petitioner was appeared on the date of final hearing of the quash petition, namely, on 16.07.2015 and came to know that already the complaint in S.T.C.No.332 of 2009 was dismissed for default, even while pendency of the interim stay granted by this Court. However, after recording the said submission, this Court by order, dated 16.07.2015, dismissed the quash petition as infructuous and the petitioner was given liberty to challenge the order of the learned Judicial Magistrate, dismissing the complaint immediately. The petitioner filed the present application seeking to condone delay of 1981 days in filing the petition to grant leave of the Court to file a criminal appeal.

3.On perusal of the affidavit filed in support of the petition, it is revealed that the petitioner engaged a Counsel for the above case and he was contesting the quash petition only at the time of hearing namely, on 16.07.2015. The petitioner came to understand about the dismissal of his complaint for non-prosecution as early as on 01.03.2010 itself. The petitioner was under thought that already this Court stayed all further proceedings and as such his presence was not necessary before the Court below till the quash petition pending before this Court.

4.However, the Court below without considering the pendency of the quash petition before this Court, dismissed the complaint for non-prosecution.

5.In this regard, the learned Counsel appearing for the petitioner cited the judgment in reported in **1998 CRL.L.J.856**, wherein the Hon'ble Supreme Court of India held that when the complainant is absent on a particular day, the Court must consider whether the personal attendance of the complainant is essential on that day for the progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason and if the situation does not justify the case being adjourned, the Court is free to dismiss the complaint and acquit the accused. If the presence of the complainant on that day was unnecessary then, restoring to the step of axing down the complainant, may not be a proper exercise of the power envisaged in this Section.

6.In the case on hand, admittedly, when the quash petition filed by the respondent was pending before this Court along with the order of interim stay of all further proceedings in S.T.C.No.332 of 2009, the petitioner's presence was not necessary before the trial Court. Without considering the same, the Court below simply dismissed the complaint for non-prosecution.



7. In view of the above, the condone delay petition is allowed on condition that the petitioner shall pay a sum of Rs.5,000/- [Rupees five thousand only] to the respondent directly on or before 15.03.2022. The condone delay petition is allowed accordingly. On payment of cost, the Registry is directed to number the leave petition.

sd/-
09/03/2022

/ TRUE COPY /

11/03/2022
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE JUDICIAL MAGISTRATE,
UTHAMAPALAYAM.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE
THENI DISTRICT.

3 THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI. **(SOFT COPY)**

+1 CC to Mr.P.SAMUEL GUNASIGH, Advocate (SR-1885[I] dated
10/03/2022)

+2 CC to Mr.B.A.MURUGANANTHAM, Advocate (SR-11052[I] dated
10/03/2022)

ORDER
IN
Crl.M.P.(MD) No.271 of 2021
in
Crl.A.(MD) SR.No.1188 of 2021
Date :09/03/2022

MK/PN/SAR.II/11.03.2022/3P/6C