



CRL.M.P.(MD)No.6709 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.07.2022

CORAM:

**THE HONOURABLE MR.JUSTICE P.N.PRAKASH
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA**

CRL.M.P.(MD)No.6709 of 2021

in

CRL.A.(MD)No.SR11027 of 2021

State represented by,
The Inspector of Police,
Thiruvattar Police Station,
Kanyakumari District.
(Crime No.264/2011)

: Petitioner

Vs.

1.Jesus Christopher @ Unniappan
2.Viju

: Respondents

PRAYER in CRL.M.P.(MD)No.6709 of 2021: Criminal
Miscellaneous Petition filed under Section 5 of the Limitation Act,
praying to condone the delay of 1459 days in filing the Appeal
against the acquittal judgment passed in Sessions Case No.74 of



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2012 dated 23.01.2017 on the file of the Court of Sessions,
Kanyakumari District at Nagercoil.

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PRAYER in CRL.A.(MD)No.SR11027 of 2021: Criminal Appeal filed under Section 378(1) of the Criminal Procedure Code, praying to allow this appeal and set aside the judgment of acquittal of the respondents / Accused (A1 & A2) in Sessions case No.74 of 2012 dated 23.01.2017 by the Court of Sessions, Kanyakumari Division at Nagercoil and convict the respondents / Accused (A1 & A2) for the charges framed against them.

For Petitioner : Mr.S.Ravi

Additional Public Prosecutor

For Respondents : G.Aravinthan

O R D E R

[Order of the Court was made by P.N.PRAKASH, J.]

The respondents herein faced the prosecution along with one Suresh [A2] in S.C.No.74 of 2012 for the offences under Sections 120(b) and 302 IPC in which, the learned Sessions Judge, Kanyakumari by judgment and order dated 23.01.2017 has acquitted the respondents. Since Suresh [A2] died during trial, the prosecution against him stood abated. Challenging the conviction



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and sentence, the State has filed the present Appeal against the acquittal with an enormous delay of 1459 days for condoning which the present petition under Section 5 of the Limitation Act has been filed.

2. Heard Mr.S.Ravi, learned Additional Public Prosecutor appearing for the State and Mr.G.Aravinthan, learned Counsel appearing for the respondents.

3. We are not convinced with the reasons given in the affidavit filed in support of the delay application because in paragraph No.2 of the affidavit that has been filed by the Inspector of Police, Thiruvattar Police Station, it is stated as follows:

'I humbly submit that in this case the judgment was passed by the District and Sessions Judge, Kanyakumari on 23.01.2017 in S.C.No.74/2012. The certified copy of the judgment was applied by the prosecution on 25.01.2021 and obtained the same on 02.02.2021. I further submit that after obtaining the certified copy of the judgment and opinion was sought for from the Public Prosecutor, District and Sessions Court, Kanyakumari and he offered his opinion. After obtaining the opinion, for filing appeal in this case, proposal



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was sent by the Superintendent of Police, Kanyakumari District to the Director General of Police, Chennai. In turn the Director General of Police, Chennai has sent the proposal to the Principal Secretary to Government, Home (Pol.VII) Department, Chennai. Further the Principal Secretary to Government, Home (Pol.VII) Department, Chennai was sent to the learned Public Prosecutor, High Court, Madras and after perusing the entire records the Public Prosecutor, High Court, thought that this is a fit case for filing an appeal against acquittal and appeal against acquittal is being filed on 20.04.2021 before the Madurai Bench of Madras High Court, Madurai.'

4.A reading of the above shows that the order of acquittal was passed on 23.01.2017 and the copy application was made only on 25.01.2021. Mr.S.Ravi, learned Additional Public Prosecutor contended that this may not be factually correct because the Public Prosecutor has given his opinion on 30.12.2020.

5.We find from the communication of the Public Prosecutor that the matter was referred to him for his opinion by the Government vide letter dated 16.12.2020. Thus, it cannot be stated that there was a delay in the office of the Public Prosecutor



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for giving of opinion. However, the delay of 3 ½ years in filing the copy application for getting the certified copy of the judgment which has not been properly explained militates against condonation of delay.

6.In the result, this petition is devoid of merits and the same is dismissed. CRL.A.(MD)No.SR11027 of 2021 is also dismissed at the SR stage itself.

[P.N.P.J.] & [R.H.,J.]

12.07.2022

Index : Yes/No

Internet : Yes/No

MR

To

The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.N.PRAKASH, J.
and
R.HEMALATHA, J.

MR

ORDER MADE IN
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in
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