



Crl.M.P.No.123 of 2023
in Crl.A.SR.No.75 of 2023

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V. SIVAGNANAM, J.

This Petition is filed to condone the delay of 247 days in filing the above Criminal Appeal against the judgment dated 08.12.2020 made in C.C.No.454 of 2018, on the file of Judicial Magistrate No.1, Namakkal.

2. The Learned Counsel for the petitioner submitted that the order of the trial Court was delivered on 08.12.2020 and applied for copy on 11.12.2020. After obtaining the copy of the order, in view of the serious outbreak of Pandemic COVID-19, the trial Court counsel was not able to communicate the same to the petitioner and misplaced the copy in another bundle. After thorough search of the bundle, the bundle was found. Thereafter, the petitioner counsel has filed an appeal. It is purely inadvertence act of the Advocate. There is no wilful nor wanton negligence on the part of the petitioner.

3. Further, the Learned Counsel for the petitioner contended that the Hon'ble Supreme Court in *Miscellaneous Application No.665/2021 in SMW(C) No.3/2020*, has elucidated that the condonation period may be excluded from calculating the limitation period. Hence, the petitioner seeks to condone the



delay of 247 days in filing the above Criminal Appeal.

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4. The Learned Counsel for the respondent has filed counter and objected that the delay of 247 days was not properly explained and also there was more than 2 years delay in filing the above Criminal Appeal.

5. I have considered the submissions made by the Learned Counsel for the petitioner and the Learned Counsel for the respondent. Records perused.

6. This Court, on perusal of the affidavit, at paragraph No.6, has explained the reason for delay, which reads as below:-

“The order was delivered on 08.12.2020 and copy was applied on 11.12.2020. After obtaining the copy of the judgment, in view of serious outbreak of Pandemic COVID – 19. The trial Court counsel was able to communicate the same to me and misplaced in another bundle and after thorough search of the same, the bundle was found in another bundle and after finding the same, I have immediately approached the present counsel and filing the present appeal. The delay in filing the appeal is neither wilful nor wanton, but purely due to the aforesaid reason.”



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7. Further, on considering the order of the Hon'ble Supreme Court in Miscellaneous Application No.665/2021 in SMW(C) No.3/2020, has explained that the condonation of delay may be excluded from calculating the limitation period. There is no material to show that the petitioner is neither wilful nor wanton, in order to delay the proceedings. To give fair opportunity to the petitioner, the reasons stated in the affidavit is accepted and the delay of 247 days in filing the above Criminal Appeal is condoned. Accordingly, this Criminal Miscellaneous Petition is ordered.

21.02.2023

Index :Yes/No.
Internet:Yes/No.
bsm

Note: The Registry is directed to number the Criminal Appeal, if it is, otherwise, in order.



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