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Cr.L.R.C.No.22 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

CRL.R.C.NO.22 OF 2023

Mr. Ravikumar

.. Petitioner

Vs

Mr.Raja

... Respondent

Prayer: Criminal Revision Petition filed under section 397 r/w.401 Cr.P.C. to set aside the order dated 12.12.2022 passed in Cr.M.P.No.5420 of 2022 in unnumbered CA.No. of 2022 on the file of the Principal Sessions Judge, Villupuram and allow the above Criminal Revision Case.

For Petitioner : Ms.A.S.Neela Narayani

For Respondent : Mr. N. Manoharan

ORDER

This Criminal Revision case has been filed challenging the order of dismissal dated 12.12.2022 passed by the Principal Session Judge, Villupuram in Cr.L.M.P.No.5420 of 2022 seeking to condone the delay of



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1320 days in filing criminal appeal and number the appeal and suspend the sentence and grant bail to the petitioner.

2. The learned counsel for the petitioner submitted that the petitioner is an accused in CC.No.174 of 2016 on the file of Judicial Magistrate (Fast Track Court) Kallakurichi. The respondent/complainant filed a complaint against the petitioner for an offence under section 138 of Negotiable Instruments Act. After trial, the trial court, by its judgment dated 23.10.2018, convicted and sentenced him to undergo one year simple imprisonment and also to pay a fine amount of Rs.10 lakhs, in default in payment, to undergo three months simple imprisonment and the fine amount to be paid by the petitioner has to be treated as compensation. The trial court has suspended the sentence imposed on the petitioner in Crl.M.P.No.3804/2018 till 14.11.2018. After the expiry of appeal period, since the petitioner did not approach the lower appellate court and preferred appeal, the trial court issued Non Bailable Warrant against the petitioner on 07.12.2021 and the same was executed on 17.4.2022 and now the petitioner is under judicial custody from 17.04.2022. Thereafter, the petitioner has preferred appeal before the Principal Sessions Judge, Villupuram along with



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a petition in Crl.M.P.No.5420 of 2022 seeking for condonation of delay of 1320 days in preferring criminal appeal. He further submitted that the reason for the delay of non filing of appeal in time is that due to curfew imposed by the government on account of Covid-19 pandemic and further the petitioner went to Kerala for taking treatment for paralysis, therefore, the petitioner was not able to approach the lower appellate court. But the learned appellate judge dismissed the petition filed to condone the delay on the ground that the petitioner has not shown sufficient reason for the delay and not filed any document to prove his illness.

3. In support of his contention, the learned counsel for the petitioner also relied on the decision of the Supreme Court reported in the case of **State of Odisha Vs. Surendra Munda [2020 16 SC page 443]** and submitted that in a criminal matter, where the life and liberty of a person is in question, one's right of appeal has always been accepted and on the ground of delay and limitation, his right of appeal ought not be negated. The learned counsel further submitted that he is ready to settle the matter with the complainant. Therefore, in view of the above, the delay may be



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condoned. Thus he prayed for allowing this criminal revision case.

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4. The leaned counsel appearing for the respondent objected to condone the delay contending that the petitioner had not assigned any valid reason for condoning the huge delay of 1320 days. Even though, the trial court suspended the sentence imposed upon him till 14.11.2018, he did not approach the appellate court and file appeal within time. Further he has not produced any materials to prove his health related ailments. In such circumstances, there is no merits in this revision, as such, he prayed for dismissal of the same.

5. Considered the arguments advanced on either side and perused the impugned order and entire materials available on record.

6. The fact reveals that the petitioner is an accused in C.C.No.174/2016 on the file of Judicial Magistrate (Fast Track Court), Kallakurichi. The respondent/complainant filed a complaint against the petitioner/accused for dishonour of cheque for the offence u/s.138 of NI



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Act. After trial, the trial court by its judgment dated 23.10.2018 convicted and sentenced the petitioner as stated above. Thereafter, his sentence got suspended by the trial court itself till 14.11.2018, but he had not approached the lower appellate court within the time as directed by the trial court and file an appeal. Since the petitioner/accused had not approached the appellate court, a non bailable warrant has been issued, pursuant to execution of the same, he was remanded to judicial custody on 17.4.2022 and since then, he has been in judicial custody. Admittedly, the petitioner has not filed any affidavit for condoning the delay before the lower appellate court and also not filed any medical records, in order to show that he was taking treatment for paralysis. It is a fact that the petitioner has preferred an appeal against his conviction imposed by the trial court. The learned counsel for the petitioner relied upon the decision of the Honourable Supreme court reported in the case of ***State of Odisha Vs. Suendra Munda [2020 16 SC page 443]***, wherein, it has been held as follows;

'4. In a criminal matter, where the life and liberty of a person is in question, one's right of appeal has always been accepted and appropriate steps must be taken to effectuate



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that right. The considerations on account of delay and limitation ought not to negate the right of appeal inhering in an accused.'

From the principle laid down by the Hon'ble Apex Court, it is clear that on the ground of delay in preferring appeal, one's right of appeal cannot be negated.

7. Considering the principle stated by the Supreme Court and also the fact that the petitioner is also ready to settle the matter with the complainant, I am inclined to condone the delay of 1320 days in preferring the appeal. Hence, the impugned order is hereby set aside and the appellate court is hereby directed to take the appeal on its file and decide the same on merits and in accordance with law within a period of two months from the date of receipt of a copy of this order.

8. Accordingly, the Criminal Revision Case is allowed.

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msr
Index: yes/no
Internet:yes/no



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To
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1. The Principal Sessions Judge, Villupuram
2. The Judicial Magistrate (Fast Track Court),
Kallakurichi
3. The Public Prosecutor,
Madras High Court.



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V. SIVAGNANAM, J.

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