



WEB COPY



CRL.MP.NO.284 OF 2023 IN CRL.A.SR.NO.55858 OF 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

CRL.MP.NO.284 OF 2023

IN

CRL.A.SR.NO.55858 OF 2022

Aruna Jain

... Petitioner in both

Vs.

1. Proprietor

M/s. Agro Chemical Industries

2, Vaniapillayar Koil Street,

Erode – 1.

2.K.Krishnamoorthy

... Respondents in both

PRAYER IN CRL.MP.NO.284 OF 2023: Criminal Miscellaneous Petition filed under Section 5 of Limitation Act, to condone the delay of 172 days in filing the above appeal against the judgment dated 12.10.2020 passed in C.C.No.323 of 2008 on the file of the Judicial Magistrate No.II, Erode.

PRAYER IN CRL.A.SR.NO.55858 OF 2022: Criminal Appeal filed under Section 378 Cr.P.C., to set aside the judgment dated 12.10.2020 passed in C.C.No.323 of 2008 on the file of the Judicial Magistrate No.II, Erode.



WEB COPY



CRL.MP.NO.284 OF 2023 IN CRL.A.SR.NO.55858 OF 2022

For Petitioner .. Mr.J.Titus Enock
(in both)

For Respondent-2 .. Mr.S.Kaithamalaikumaran
(in both)

COMMON ORDER

The learned counsel for the petitioner submitted that the petitioner filed a complaint against the respondents / accused for the offence punishable under Section 138 of the Negotiable Instruments Act, which was dismissed on 12.10.2020. Against which, the petitioner filed an appeal with a delay of 172 days and pleaded to condone the delay and to grant leave to file an appeal against the order of acquittal by dismissing the complaint preferred by the petitioner.

2. The first respondent is a Proprietorship concern and the second respondent is the Mandate Holder of the first respondent. The second respondent filed a counter affidavit and objected to condone the delay of 172 days in filing the appeal stating that the reasons for the delay is not properly explained in the affidavit. Apart from this, the second respondent along with his brother N.Karthikeyan filed a Suit in O.S.No.42 of 2022 on the file of the I Additional Sub Court, Erode, against the



petitioner for malicious prosecution and claimed damage of Rs.9,50,000/-.

In that Suit, summon was served on the petitioner and she appeared through an Advocate and filed her written statement on 29.10.2022 after taking various adjournments. In these circumstances, the petition to condone the delay not a *bonafide* one and thus, pleaded to dismiss the same.

3. I have considered the submissions made on either side and perused the materials available on record.

4. On perusal of the facts, it reveals that after the dismissal of the complaint on 12.10.2020, the second respondent along with his brother N.Karthikeyan had filed a Suit in O.S.No.42 of 2022 on the file of I Additional Sub Court, Erode, against the complainant / petitioner claiming a sum of Rs.9,50,000/- as damages for the malicious prosecution initiated by her in C.C.No.323 of 2008 on the file of Judicial Magistrate No.II, Erode. The plaint was filed on 03.01.2022. In the said suit, the complainant / petitioner was served with the Court notice and she appeared through an Advocate and filed her written statement on 29.10.2022 after



various adjournments. In order to overcome the issue with regard to the dismissal of the complaint, the petitioner / complainant had filed copy application on 17.10.2022 as as afterthought and had filed an appeal, as if there was a delay of 172 days by suppressing the delay of 2 years in filing copy application. Further, it is not disputed that the respondents had filed a Suit against the petitioner / complainant in O.S.No.42 of 2022 on the file of the I Additional Sub Court, Erode, claiming a sum of Rs.9,50,000/- as damages for the malicious prosecution initiated by the petitioner/ complainant in C.C.No.323 of 2008 on the file of learned Judicial Magistrate No.II, Erode and the same was dismissed for non-prosecution by the petitioner.

5. The contention of the learned counsel for the petitioner that after filing the complaint, the petitioner gave power to one person and that the said Power of Attorney has failed to prosecute the complaint is not acceptable one. Further, it is noticed that in the Suit filed in O.S.No.42 of 2022, the petitioner appeared through an Advocate and also filed written statement on 29.10.2022 after various adjournments. Under such circumstances, the reasons stated by the petitioner for the delay of 172



CRL.MP.NO.284 OF 2023 IN CRL.A.SR.NO.55858 OF 2022

days in filing the appeal are not acceptable and there is no merit in the Criminal Miscellaneous Petition.

6. Accordingly, the Criminal Miscellaneous petition is dismissed. Consequently, the Criminal Appeal is closed at the SR stage itself.

31.03.2023

TK

To

1.The Judicial Magistrate No.II
Erode.

2.The Public Prosecutor
High Court of Madras.



WEB COPY



CRL.MP.NO.284 OF 2023 IN CRL.A.SR.NO.55858 OF 2022

V.SIVAGNANAM, J.

TK

CRL.MP.NO.284 OF 2023
IN CRL.A.SR.NO.55858 OF 2022

31.03.2023