



Crl.R.C.No.782 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.Rc.No.782 of 2023

K.Chinnamuthu

... Petitioner

Vs.

State Rep by
The Inspector of police,
Magudanchavadi Police Station,
Salem.
(Crime No.406 of 2015)

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to set aside the order dated 06.08.2021 made in Crl.M.P.No.1462 of 2021 in Crl.A.Sr.No.8509 of 2021 on the file of the Principal District and Sessions Court, Salem.

For Petitioner : Mr.W.Camyles Gandhi

For Respondent : Mr.R.Vinothraja

Government Advocate

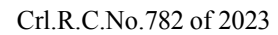


(Crl.Side)

ORDER

This Criminal Revision Petition has been filed to set aside the order passed by the learned Principal District and Sessions Judge, Salem in Crl.M.P.No.1462 of 2021 in Crl.A.Sr.No.8509 of 2021 dated 06.08.2021.

2.The learned counsel for the petitioner submitted that the petitioner is the 1st accused in C.C.No.39 of 2016 on the file of the Judicial Magistrate-II, Sankari. The respondent-Police prosecuted the petitioner along with the other accused persons under Sections 294(b) and 325 of I.P.C in Crime No.406/2015 . The trial Court acquitted the other accused in this case and convicted the petitioner under Section 294(b) of I.P.C and directed him to pay a fine of Rs.1,000/- in default to undergo 1month simple imprisonment and sentenced him to undergo one year rigorous imprisonment and to pay a fine of



3.The learned Government Advocate (Crl.side) for the
ndent submitted that the petition was dismissed for default for



non-appearance of the petitioner before the lower appellate Court.

4.I have considered the submissions made by the learned counsel for the petitioner as well as the learned Government Advocate (Crl.side) for the respondent.

5.On perusal of the records, the fact reveals that petitioner was prosecuted along with the other accused under Sections 294(b) and 325 of I.P.C in Crime No.406/2015. However, the other accused were acquitted and the petitioner was convicted for the above offences. Challenging the same, he preferred an appeal on the file of the Principal District and Sessions Court, Salem in Crl.A.Sr.No.8509 of 2021 with the delay of 11 days. Hence, he filed a petition in C.M.P.No.1462 of 2021 under Section 5 of the Limitation Act to condone the delay in filing the appeal, which was dismissed for



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default for his non-appearance. The said order is now under challenge.

6. In a criminal matter, where the life and of a person is in question, one's right of appeal has always been accepted and appropriate steps must be taken to effectuate that right. The consideration on account of delay and limitation ought not to negate the right of appeal inhering in an accused. The above said principle is settled by the Hon'ble Supreme Court reported in **(2020) 16 SCC 443 [State of Odisha Vs Surendra Munda]**. In view of the above legal proposition, the impugned order dated 06.08.2021 is set aside and the criminal revision is allowed. C.M.P.No.1462 of 2021 is restored. The learned Principal Sessions Judge, Salem is directed to dispose of the said C.M.P on merits in the manner known to law.



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Index: Yes/No
Internet: Yes/No
srn

To

- 1.The Principal District and Sessions Court, Salem.
2. The Inspector of police,
Magudanchavadi Police Station,
Salem.
3. The Public Prosecutor, Madras High Court.



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V.SIVAGNANAM, J.,

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