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Crl.R.C.No.991 of 2023



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 30.06.2023

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THE HONOURABLE Mr. JUSTICE V. SIVAGNANAM

Crl.R.C.No.991 of 2023 &

Crl.M.P.No.8811 of 2023

1. Mrs.K. Nandhini @ Nithiya ... Petitioner
Vs.

1. Mr. G. John Lourduraj
2. The State, represented by the
Public Prosecutor,
The Nilgiris District,
Udhagamandalam ... Respondents

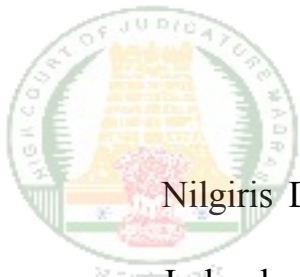
Criminal Revision filed under Section 397 and 401 of Cr.P.C., to set aside the order passed in Crl.M.P.No.836 of 2022 in Crl.A.(SR) No.1133 of 2022, dated 08.11.2022 by the Sessions Division of the Nilgiris District at Udhagamandalam by allowing the Criminal Revision.

For Petitioner : Mr. J.Franklin

For Respondent : Mr.R.Vinothraja
GA (crl.side)

ORDER

This criminal revision has been filed challenging the order passed in C.M.P.No.836 of 2022 in Crl.A.SR.No.1133 of 2022, dated 08.11.2022 by the learned Sessions Judge, Udhagamandalam, Court of Sessions Division of the



Nilgiris District at Udhagamandalam in and by which, the learned Sessions Judge has dismissed the application filed by the petitioner under section 5 of Limitation Act to condone the delay of 62 days in filing the appeal against the order in STC.No.31/2019, dated 21.04.2022 on the file of Judicial Magistrate, Coonoor.

2. The learned counsel appearing for the petitioner submitted that the petitioner is an accused in STC.No.31/2019. The respondent filed a complaint against the petitioner/accused for the offence under section 138 of Negotiable Instruments Act and the same was taken on file in STC.No.31/2019 by the Judicial Magistrate Fast Track Court, magisterial Level, Coonoor. After trial, the petitioner was found guilty and was convicted and sentenced by the trial court. Aggrieved over such conviction and sentence, he filed appeal before the Sessions Judge, Udhagamandalam, Court of Sessions Division of the Nilgiris District at Udhagamandalam with a delay of 62 days. On 20.10.2022, the condonation of delay petition was allowed on payment of cost of Rs.7,500/- to the respondent. Since the petitioner failed to pay the cost, the petition seeking condonation of delay was dismissed by the court below on 8.11.2022. The learned lower appellate Judge dismissed the said application on the ground that the petitioner called absent and condition not complied with. He further



submitted that the appellate court, without considering the fact as well as legal principle that the appeal is a statutory right and it cannot be curtailed on the ground of technicalities. In the circumstances, he seeks to set aside the impugned order and allow the revision

3. Though notice served on the 2nd respondent/complainant and his name being printed in the cause list, there is no representation for him either in person or through counsel, when the matter is called.

4. Heard the learned Govt. Advocate (crl.side) appearing for the 2nd respondent.

5. I have gone through the affidavit and petition filed by the petitioner before the trial court and the impugned order. Admittedly, the petitioner/accused was found guilty by the Judicial Magistrate Fast Track Court at Magisterial Level, Coonoor and he was convicted for the offence under section 138 of Negotiable Instruments Act. Against such conviction, the petitioner filed an appeal with a delay of 62 days and also filed an application for condoning the delay of 62 days in filing the appeal. The learned Sessions Judge on 20.10.2022 allowed the said application on payment of cost of



Rs.7,500/- to the respondent on or before 07.11.2022. Since the petitioner failed to comply with the order dated 20.10.2022, the delay condonation petition was dismissed. It is the statutory right of the accused to file appeal. It has to be given effect and on the basis of technicalities of delay in filing the appeal, the right of the petitioner to appeal cannot be curtailed.

6. It is relevant to note that in the judgment 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 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 Honourable Supreme Court and also the fact that the petitioner is ready comply with the condition imposed by the appellate court, dated 20.11.2022, I am inclined to condone the delay of 62 days in preferring the appeal before the court below.



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8. In view of the foregoing discussions, the petitioner is hereby directed to comply with the condition imposed by the appellate court dated 20.11.2022 and to pay the cost of Rs.7,500/- to the respondent within a period of two weeks from the date of receipt of a copy of this order. On complying with the condition, the delay is condoned and the appellate court is directed to take the appeal on its file and decide the same on merits and in accordance. In the event of non-compliance of the order dated 20.11.2022, the impugned order is directed to be restored.

9. The Criminal Revision Case is allowed on the above terms.

30.06.2023

msr

Index:Yes/No

Internet:Yes/No

To

- 1.The Sessions Judge, Udhagamandalam,
Court of Sessions Division of the Nilgiris District,
Udhagamandalam
- 2.The Judicial Magistrate, Fast Track Court,
Magisterial Level, Coonoor.
- 3.The Public Prosecutor, High Court, Madras.

Note: Issue copy on 03.07.2023



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V. SIVAGNANAM, J.

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and
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