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Crl.R.C.No.595 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2023

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THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.R.C.No.595 of 2021

1. Alwyn Ronald,
2. S.Ramalingam,

... Petitioners

/vs/

M.Shanthini

... Respondent

Prayer : Criminal Revision Petition is filed under Section 397 r/w 401 of Cr.P.C., pleaded to allow this revision petition and set aside the order dismissed in Crl.M.P.No.1416 of 2020 in un-numbered Criminal Appeal S.R.No.216 of 2020 non-appearance dated 12.03.2021 by the Hon'ble Principal Sessions Court, Thiruvallur and non-bailable warrant may be recalled issued by the Hon'ble Judicial Magistrate No.II, Thiruvallur.

For Petitioners ... Mr.V.Maharajan

For Respondent ... Mr.R.Sasikumar

ORDER



This Criminal Revision Petition is filed against the written order passed by Principal District and Sessions Judge, Tiruvallur in Crl.M.P.No.1416 of 2020 in Crl.Appeal Sr.No.216 of 2020 dated 08.01.2020.

2. The learned counsel for the petitioners contended that the petitioners filed an appeal before the Principal District & Sessions Judge, Tiruvallur against the fair and final order passed in Crl.M.P.No.1531 of 2014 dated 19.03.2018 on the file of Judicial Magistrate, Tiruvallur, with the delay of 624 days along with condone delay petition in Crl.M.P.No.1416 of 2020, which was dismissed on 12.03.2021, for non-appearance of the petitioner. Hence, they filed petition in F.No.2450 of 2021 for restoring the above said condone delay petition and the Lower Appellate Court, returned the petition stating that since the delay petition was already dismissed, the petitioner has to approach appropriate forum.

3. Further, contended that, the condone delay petition was not decided on merits and it was also dismissed for default. Hence, the petition may be numbered and the order may be passed on merits. Therefore, the written order is unsustainable and seeking to set aside the same.

4. The Learned Counsel for the respondent filed counter and



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stated that the Learned Judicial Magistrate No.II, Thiruvallur passed an order directing the petitioners to pay a sum of Rs.15,000/- per month as maintenance from the date of petition and to pay a sum of Rs.25 lakhs as compensation. But the petitioners have not paid single pie towards maintenance and also failed to return the Sridhana articles and house hold articles etc., Further, the Learned counsel for the respondent contended that petitioners have filed a Crl.A.Sr.No.216 of 2020 along with the Crl.M.P.No.1416 of 2020 to condone the delay of 624 days in filing the said criminal appeal. The said condone delay petition was dismissed for default on 08.01.2020 since the petitioners failed to proceed the case. Hence, this criminal revision case is liable to be dismissed.

5. Heard the Learned Counsel for the petitioner and the Learned Counsel for the respondent. Perused the records.

6. On verification of records, the fact reveals that the petitioners filed an appeal against the fair and final order passed in Crl.M.P.No.1531 of 2014 dated 19.03.2018 on the file of Judicial Magistrate Court, Thiruvallur. The petitioners preferred an appeal before the Principal District & Sessions Judge, Thiruvallur, with condone delay petition for 624 days which was numbered in Cr.M.P.No.1416 of 2020 in Crl.A.Sr.No.216 of 2020. The



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Lower Appellate Court, on 21.03.2020 dismissed the petition for non-appearance of the petitioners. To restore the application, the petitioners filed an application in F.No.2450 of 2021, which was returned by the Lower Appellate Court with the endorsement that the petitioners has to file restoration petition before proper Court since the order dated 12.03.2021 has been passed by them. The Court has to decide the case on merit upon hearing the learned counsel for the parties. Therefore, the returned order passed by the Appellate Court dated 12.03.2021 is hereby set aside. The Lower Appellate Court is hereby directed to take the petition on file for restoration and decide the petition on merits, after hearing the Learned Counsel for the parties. Accordingly, the *Criminal Revision Petition is allowed.*

23.01.2023

Index : Yes/No.

Internet : Yes/No.

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To,

1. The Principal District & Sessions Court, Tiruvallur.
2. The Judicial Magistrate No.II, Tiruvallur.

V.SIVAGNANAM, J.

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