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Crl.M.P.No.11019 of 2023

Crl.M.P.No.11019 of 2023
in
Crl.A.SR.No.34890 of 2023

M. NIRMAL KUMAR, J.

This petition is filed to condone the delay of 30 days in filing the above appeal.

2.The petitioner as complainant had filed a private complaint against the respondent under Section 138 of the Negotiable Instruments Act. The Trial Court by judgment dated 13.04.2023, dismissed the complaint for non prosecution under Section 256 Cr.P.C. and not on merits, against which, the present appeal and condone delay petition with a delay of 30 days.

3.The contention of the petitioner is that the petitioner has been appearing before the Trial Court and later he had a skull injury. He was admitted in the hospital, undergone surgery and due to which he had impediment in movement. Earlier occasions, he appeared before the trial Court. The Trial Court found that the petitioner not co-operate with the trial giving reason that the matter is likely to be settled and not getting into the box causing delay and finally on the date of judgment he has not appeared. Though he filed a petition under Section 256 Cr.P.C. on the medical ground, the Trial Court giving reason that no medical



Crl.M.P.No.11019 of 2023

certificate produced, is not proper. Further for the delay, he relied upon the decision of the Karnataka High Court and Calcutta High Court wherein it is held that limitation given under Section 378(4) Cr.P.C. would not affect petitioner's right of invoking Section 5 of the Limitation Act.

4.Mr.A.Thirumaran, learned counsel appearing for the respondent opposed the same. He also filed counter affidavit stating that the appeal cannot be entertained without leave of this Court and such leave cannot be granted after the period of limitation, i.e.,after the expiry of 60 days as per Section 378(3), 378(4) and 378(5) Cr.P.C. Further, he relied upon the decision of this Court in the case of *M.Ramamurthy vs. N.A.Ramakrishnan* in Crl.R.C.(MD) No.43 of 2008 and stressed his arguments relying on paragraphs 12 and 13.

5.This Court, on the submissions made, finds that the respondent's objection cannot be entertained, since the prescribed period under Section 378(3), 378(4) and 378(5) Cr.P.C is subject to Limitation Act, which the Calcutta High Court and Karnataka High Court decided in detail. The citation referred by the respondent is pertaining to a conversion of a revision to an appeal, which is not applicable to the present case.



Crl.M.P.No.11019 of 2023

WEB COPY 6. In view of the same, this Court is inclined to condone the delay.

Accordingly, the delay stands condoned and the petition is ordered.

12.12.2023

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Note: Registry is directed to number the Criminal Appeal, if it is otherwise in order.



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