



Crl.M.P.No.16805 of 2022 in Crl.A.Sr.No.48624 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.02.2023

PRONOUNCED ON: 24.02.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.M.P.No.16805 of 2022

in

Crl.A.Sr.No.48624 of 2022

V.Ravi

...

Petitioner

Vs.

S.Thangamani

...

Respondent

PRAYER: This Criminal Miscellaneous Petition has been filed under Section 5 of Limitation Act, to condone the delay of 141 days in filing the connected criminal appeal against the order C.A.No.338 of 2019 on the file of the 1st Additional District & Sessions Judge, Coimbatore in C.C.No.310 of 2016 on the file of the Judicial Magistrate (FTC-1), Coimbatore.

For Petitioner : Mr.M.Saravanakumar

For Respondent : Mr.M.Guruprasad



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ORDER

WEB COPY This criminal miscellaneous petition has been filed to condone the delay of 141 days in filing the connected criminal appeal against the order dated 18.02.2021 passed in C.A.No.338 of 2019 by the 1st Additional District & Sessions Judge, Coimbatore, reversing the order dated 20.09.2019 passed in C.C.No.310 of 2016 by the Judicial Magistrate (FTC-1), Coimbatore.

2.The learned counsel for the petitioner submitted that the petitioner is the appellant/complainant herein. He filed a complaint against the respondent/accused for an offence under Section 138 of the Negotiable Instruments Act, which was taken on file before the learned Judicial Magistrate, Fast Track Court No.I, Coimbatore, in C.C.No.310 of 2016. After trial, the respondent was convicted on 20.09.2019 and sentenced to undergo simple imprisonment for the period of six months and the respondent shall pay the compensation of Rs.4,00,000/- within two months from the date of receipt of that judgment, in default, the respondent shall undergo two months imprisonment. Aggrieved against the said judgment,



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the respondent filed the Criminal Appeal in C.A.No.338 of 2019 before the 1st Additional District and Sessions Court, Coimbatore. The learned Sessions Judge allowed the criminal appeal and thereby acquitted the respondent on 18.02.2021. Against the acquittal order, the petitioner preferred the present criminal appeal with the delay of 141 days and pleaded to allow the condone delay petition.

3.The learned counsel for the respondent filed his counter and objected to allow the petition and contended that the judgment in C.A.No.338 of 2019 passed on 18.02.2021 and the copy application made on 17.06.2022 and the same was made ready on 30.06.2022 and the petitioner had only received the same on 12.07.2022 and filed the present Criminal Appeal on 10.10.2022 with an inordinate delay of 141 days, which shows the lethargic and negligence on the part of the petitioner and there is no bonafide on the part of the petitioner. Although the grace period of exemption in preferring appeal and other petitions has ended on 01.03.2022, the petitioner has only chosen to apply for a copy application on 17.06.2022 and there was a delay of 141 days in filing the present



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criminal appeal. In support of his contention, he relied on the following Judgments, namely, (1)*Sukhwinder Singh Vs. Surinder Pal* reported in (1996) 1 RRR 170 (1), (2)*Madhavan Pillai Vs. Thabasi (C.R.P.(NPD) No.1174 of 2018)*, (3)*Esha Bhattacharjee Vs. Raghunathpur Nafar Academy*, reported in (2013) 12 SCC 649 (4)*Madein Baljeet Singh Vs. State of U.P.*, reported in (2019) 15 SCC 33, (5)*G.Haribabu Vs. Lagula Krishnaiah Goud and 4 other* reported in 2016 SCC OnLine Hyd 97 and (6)*Brijesh Kumar V. State of Haryana* reported in (2014) 11 SCC 351. As per the above judgments, the delay has to be explained sufficiently but in this case, the petitioner has not assigned sufficient cause for the delay. There is no merit in the affidavit and petition filed by the petitioner. Hence, pleaded to dismiss the petition.

4.I have considered the matter in the light of the submissions made by the learned counsel for the petitioner as well as the learned counsel for the respondent.



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5. On perusal of the records, it is seen that the petitioner is the complainant and the respondent is the accused. The petitioner filed a complaint against the respondent for the offence under Section 138 of the Negotiable Instruments Act, which was taken on file before the learned Judicial Magistrate, Fast Track Court No.I, Coimbatore, in C.C.No.310 of 2016. The learned Judicial Magistrate convicted the respondent, against which, the respondent preferred the Criminal Appeal in C.A.No.338 of 2019 before the 1st Additional District and Sessions Court, Coimbatore. The learned Sessions Judge allowed the criminal appeal and thereby acquitted the respondent on 18.02.2021. According to the petitioner, his counsel before the trial Court did not apply for a copy of the judgment immediately and he belatedly applied. After getting the judgement copy, he filed the criminal appeal with the delay of 141 days. Therefore, there is no intentional negligence on his part. As per the decisions relied on by the learned counsel for the respondent, “sufficient cause” so as to advance substantial justice, in order to give a chance to the complainant to file the appeal, the delay has to be condoned. I find no intentional negligence or



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any inaction on the part of the petitioner for preferring the criminal appeal within the period of limitation. Hence, I am inclined to condone the delay.

Accordingly, the delay is condoned and the criminal miscellaneous petition is allowed.

Index: Yes/No

24.02.2023

Internet: Yes/No
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Note: Registry is directed to number the Criminal Appeal, if it is otherwise in order.



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V.SIVAGNANAM, J.

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Pre-delivery Judgement in
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