



Crl.M.P.No.17101 of 2022
in
Crl.A.SR.54134 of 2022

V. SIVAGNANAM, J.

This petition is filed to condone the delay of 30 days in preferring the appeal by the petitioner against the order of acquittal passed by the learned Judicial Magistrate No.1, Udumalpet, Tiruppur District in C.C.No.14 of 2016 by his judgment dated 27.07.2022.

2. The learned counsel for the petitioner submitted that the petitioner is currently residing at USA. The Power Agent appointed by the petitioner to represent on his behalf, to take legal action against the respondent became ill and returned the papers back to him. Therefore, in the process of the petitioner making arrangements to appoint a new counsel to file an appeal, there occurred a delay of 30 days in filing the appeal, thus he seeks to condone the delay in filing the appeal.

3. The learned counsel for the respondent objected for condonation of delay stating that in the appeal preferred against acquittal pertaining to



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Negotiable Instruments Act, section 5 of Limitation Act cannot be applicable, as such, the delay occurred beyond prescribed period may not be condoned. Hence he prayed for dismissal of this petition.

4. In reply, the learned counsel for the petitioner relied on the judgment of the Karnataka High Court in the case of ***Smt.Saroja Narasimhn vs. Smt.Vijaya Sharma***, wherein, the learned Judge had settled the principle that even in the case of appeal against acquittal, section 5 of Limitation Act can be applied and the delay may be condoned beyond statutory period.

5. In the judgment cited supra, in paragraphs 62 to 64, it is held as follows;

'62. The next important point is that whether on analysis of the entire special statute itself, whether implied exclusion can be inferred to the effect that application of Limitation Act is excluded so far as section 378(4) and (5) alone is concerned. This has to be thrashed out by examining the other provisions of the Cr.P.C. So far as the appeals and applications are concerned, on thorough examination, under the special statute in respect of the various other provisions relating



to filing of appeals under Chapter XXIX of the Code and revisions though specific provisions are made with reference to fixing the period of limitation to file Appeals, Revisions, Applications etc., but in none of the said provisions, the application of section 5 of the Limitation Act is not specifically made applicable nor the said provisions are expressly excluded. Therefore, when the other provisions of Cr.P.C. does not exclude the application of Section 5 of the Limitation Act nor it is made that Section 5 is made applicable to other provisions specifically excluding section 378 of Cr.P.C. Therefore, the court cannot infer that the application of the Limitation Act in view of section 29(2) and inturn the application of Sections 4 to 24 of the Limitation Act are specifically expressed or impliedly excluded for provision u/s.378(5) Cr.P.C.

63. Therefore, in my opinion, neither the provisions of the Indian Limitation Act has specifically or expressly excluded nor there is any indication in the special statute itself that the provisions of Limitation Act are impliedly excluded.

64. For the above said reasons, I am of the considered opinion that the provisions of the Limitation Act as enunciated u/s.29(2) of the Indian Limitation Act be very well pressed in to service and in turn it can be



unequivocally said that the provisions of Limitation Act from sections 4 to 24 are very well applicable for the purpose of condoning the delay in filing the application under sub sections (4) and (5) of Section 378 of Cr.P.C. for Special Leave to prefer an appeal filed after the period of limitation fixed under that provision, if sufficient ground are made out as contemplated under section 5 of the Limitation Act.'

6. Considering the contention of the learned counsel for the petitioner and the principles stated in the decision cited above and accepting the reasons stated for occurrence of delay in the affidavit, the delay of 30 days in filing the appeal against acquittal is condoned and the petition is ordered.

01.02.2023

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