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Crl.R.C.No.1856 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.11.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1856 of 2023

Rajesh Das, M/58 Years
then Director General of Police,
No.19, Raja Street,
Kalyani Nagar,
Kottivakkam,
Chennai – 600041.

... Petitioner

Vs.

State, Rep. by,
Superintendent of Police-II,
Crime Branch CID,
Pantheon Road,
Egmore,
Chennai – 600008.
(Crime No.1/2021).

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records, allow the present Criminal Revision and set aside the impugned order dated 07.10.2023 passed in Crl.M.P.No.8929 of 2023 in C.A.No.59 of 2023 by the learned Principal District & Sessions Judge, Villupuram.

For Petitioner : Mr.S.Ashok Kumar, Senior Counsel for
Mr.M.Vijayamehanath

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor



ORDER

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This Criminal Revision Case has been filed to set aside the impugned order, dated 07.10.2023 in Crl.M.P.No.8929 of 2023 in C.A.No.59 of 2023 passed by the learned Principal District and Sessions Judge, Villupuram.

2.For disposal of the present Criminal Revision Case, the narration of the facts of the case is not necessary.

3.The petitioner along with the other accused were tried by the learned Chief Judicial Magistrate, Villupuram (trial Court) in C.C.No.231 of 2021. After ful-fledged trial, the trial Court, by judgment, dated 16.06.2023 convicted the petitioner and acquitted other accused. Aggrieved over the same, the petitioner preferred an appeal in C.A.No.59 of 2023 before the learned Principal Sessions Judge, Villupuram (lower appellate Court). During the pendency of the appeal, the petitioner filed a petition under Section 309 Cr.P.C., to adjourn the appeal in C.A.No.59 of 2023 and take the same for arguments on 20.10.2023. The lower appellate Court, by order, dated 07.10.2023 dismissed the petition, against which, the present Criminal Revision Case.

4.The contention of the petitioner is that the petitioner filed an appeal



before the lower appellate Court on 05.07.2023, thereafter, it was listed on 11.07.2023, he filed suspension of sentence and bail and the same granted on 19.07.2023, thereafter, the case adjourned to 02.08.2023, 11.08.2023, 24.08.2023, 08.09.2023 and 27.09.2023. On 07.10.2023, the petitioner filed a petition under Section 309 Cr.P.C., on the ground that the petitioner has heart ailments underwent surgery and thereafter, regularly under medical observation and medication. He is taking treatment with Dr.V.V.Bashi, Consultant Thoracic and Cardiovascular Surgeon, SIMS Institute, Chennai. In support of his contention, the petitioner along with medical records and certificates filed a petition under Section 309 Cr.P.C., before the lower appellate Court with a prayer to adjourn the above appeal in C.A.No.59 of 2023 and take the same for arguments on 20.10.2023 since due to heart ailments, the petitioner unable to undertake long travel to instruct his counsel to effectively pursue the appeal. The lower appellate Court rejected the plea of the petitioner and pass the impugned order.

5.The learned Senior Counsel appearing for the petitioner submitted that the lower appellate Court fixing the date of judgment on its own notion, without hearing the petitioner on 06.11.2023 is not proper. Today, the learned Senior Counsel produced the latest medical records of the petitioner, dated



01.11.2023 wherein the Doctor advised the petitioner to take rest for another three weeks and thereafter, he can resume his normal activities.

6.The learned Additional Public Prosecutor appearing for the respondent Police strongly opposed to entertain the present Criminal Revision Case and submitted that the petitioner being the Senior Police Officer ought to have respected the Court to proceed with the trial or appeal. On the other hand, he is periodically taking adjournments on one pretext or other. He further submitted that the case was posted on 06.07.2023 to call for the records from the trial Court and the case was adjourned to 11.07.2023, thereafter on 11.07.2023, appearance of the accused was insisted and the case was posted on 19.07.2023. On 19.07.2023, the petitioner's suspension was suspended and thereafter, on his request, the case was adjourned to 02.08.2023 and to 11.08.2023, 24.08.2023 and 08.09.2023. During these hearings, the petitioner failed to appear, on the other hand, he filed petitions seeking adjournments. Finally, on 27.09.2023, the case was adjourned to 07.10.2023 since the learned Public Prosecutor sought sometime and considering that sufficient opportunity to be given to both, the case was adjourned to 07.10.2023 recording that no further adjournments would be granted. On 07.10.2023, the case was listed, the petitioner filed the petition under Section 309 Cr.P.C., citing the health grounds with medical



records. The lower appellate Court on considering the submissions and the medical records finding that the petitioner delaying and dragging the progress of the appeal recording the adjournments sofar obtained by the petitioner, had dismissed the petition.

7.At this stage, the learned Senior Counsel appearing for the petitioner produced the adjudication proceedings and submitted that the recordings of the lower appellate Court in the recordings proceedings that the petitioner has been filing adjournment petition without any reason, is not proper since the petitioner produced the medical records for his heart ailments and post operative care procedures. Further, the petitioner needs only two weeks time to enable him to instruct his counsel to make effective defence and to succeed in the appeal. The lower appellate Court posted the case for judgment by 06.11.2023 without hearing the petitioner is not proper which is against Section 386 Cr.P.C., wherein the Code clearly contemplates that every appeal to be heard. In this case, without hearing the petitioner fixing the date of judgment is not proper and illegal.

8.The learned Additional Public Prosecutor submitted that the petitioner



had been delaying the progress of the appeal, hence, the lower appellate Court passed such order. He fairly submitted that though in the adjournment, dated 07.10.2023, there have been a recording that the Special Public Prosecutor stated they wanted to file cross appeal, but no such appeal filed, any such submission might not be proper since the respondent/prosecution had not contemplated as on date about filing of cross appeal.

9.In view of the above discussion, this Court finds reason in the submissions made by the learned Senior Counsel appearing for the petitioner. Though several adjournments have been sought by the petitioner, his heart ailments and post operative care are supported by his medical records and reports, which cannot be brushed aside. The petitioner is taking medical treatment which is confirmed by the medical reports. The Cardiologist Doctor gave the certificate, dated 01.11.2023, is consensus to the earlier medical reports and now, seeks three more weeks for resumption of normal activities of the petitioner. The petitioner to instruct his counsel to make effective preparation for his case. The appeal being a statutory appeal cannot be lose sight of. Further, the lower appellate Court fixing the date of judgment without hearing the appeal is not proper.

10.The learned Senior Counsel on instructions submitted that the



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petitioner shall be present before the lower appellate Court on 21.11.2023 and commence his arguments, in any event, he shall complete the arguments on the next day, i.e., on 22.11.2023. The petitioner might not be reason for any further delay in any manner.

11.In view of the above, this Court directs the petitioner to appear before the lower appellate Court on 21.11.2023. The lower appellate Court to hear the petitioner on that day and thereafter, proceed with the appeal, in accordance with law.

12.In the result, the impugned order, dated 07.10.2023 in Crl.M.P.No.8929 of 2023 in C.A.No.59 of 2023 passed by the learned Principal District and Sessions Judge, Villupuram is set aside. Accordingly, this Criminal Revision Case is allowed.

02.11.2023

Speaking Order/Non Speaking Order

Neutral Citation: Yes/No

Index : Yes/No

Internet : Yes/No

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Note: Issue Order Copy on 02.11.2023.



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M.NIRMAL KUMAR, J.

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To

- 1.The Principal Sessions Court,
Villupuram.
- 2.The Superintendent of Police-II,
Crime Branch CID,
Pantheon Road,
Egmore, Chennai – 600008.
- 3.The Public Prosecutor,
High Court, Madras.

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