



*Crl.M.P.(MD)No.6489 of 2023*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 27.06.2023

Delivered on : 07.07.2023

CORAM

**THE HON'BLE MR.JUSTICE K.MURALI SHANKAR**

Crl.M.P.(MD)No.6489 of 2023  
in  
Crl.R.C(MD)No.SR 15273 of 2023

S.Oeikkattan

: Petitioner

Vs.

1.The Inspector of Police,  
Koodankulam Police Station,  
Koodankulam,  
Tirunelveli District – 627 120.

2.Srikanth

: Respondents

**PRAYER in Crl.M.P(MD)No.2168 of 2023:** Criminal Miscellaneous Petition filed under Section 5 of Limitation Act, to condone the delay of 214 days in filing the above Criminal Revision as against the order passed by the learned Judicial Magistrate, Radhapuram, in Cr.M.P.No.1431 of 2022, dated 26.05.2022.

**PRAYER in Crl.R.C(MD)No.SR 15273 of 2023 :** Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C, to call for the records

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in the case in Cr.M.P.No.1431 of 2022, dated 26.05.2022 on the file of the learned Judicial Magistrate, Radhapuram and set aside the order.

For Petitioner : Mr.N.Anantha Padmanabhan, Senior Counsel,  
for M/s.A.P.N. Law Associates.

For Respondents : Mr.A.Albert James,  
Government Advocate (Criminal Side),  
for R1.

: Mr.M.Ajmal Khan, Senior Counsel,  
for M/s.Ajmal Associates, for R2.

### **ORDER**

This Criminal Miscellaneous Petition has been filed, seeking orders to condone the delay of 214 days in filing the above Criminal Revision against the order of dismissal passed in Cr.M.P.No.1431 of 2022, dated 26.05.2022 on the file of the learned Judicial Magistrate, Radhapuram.

2. The case of the petitioner is that he has filed a petition under Section 156(3) Cr.P.C in Cr.M.P.No.1431 of 2022 before the Court of Judicial Magistrate, Radhapuram, seeking directions to the first respondent Police to register FIR against the second respondent; that the petition in Cr.M.P.No.1431 of 2022, was ordered to be dismissed on 26.05.2022; that



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the petitioner has preferred the present revision, challenging the order of dismissal; that he has to prefer the Criminal Revision within 90 days, but he could not inform to his counsel because of his workload as the petitioner is working in Koodankulam Nuclear Power Project in the maintenance team; that he cannot take leave unless there is any medical emergency either to himself or to his family members; that the above delay is neither wilful nor wanton, but inevitable; that the petitioner is having fair chance of success in the above criminal revision and that the petitioner will be put to irreparable loss and hardship, if the delay is not condoned.

3. The second respondent has filed a counter statement denying the petitioner's affidavit averments and further stated that the impugned order was passed only after affording proper opportunity to the petitioner and after following the procedures as contemplated under Section 156(3) Cr.P.C and after complying the various directions and guidelines issued by this Court then and there; that the petitioner has no sufficient cause for condonation of delay; that the petitioner has come out with false averments that he cannot take leave taking into account of nature of his work, but the very fact that he has taken leave for 30 days between the order passed by



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the Magistrate Court and filing of the revision would go to show that the petitioner has not come to the Court with clean hands; that even if the entire case of the petitioner is taken as true, no offence under Sections 406 and 420 of I.P.C., is made out; that the petitioner being an officer of Nuclear Power Plant was nominated as Honorary Chairman of Koodankulam Employees Welfare Club (KEWC) by the power plant; that he has not taken any decision by himself alone to present mementoes, but it is a collective decision taken by the Management Committee; that except the averment that the second respondent has misappropriated the amounts, the petitioner has not come up with any materials to substantiate the same; that there is no cognizable offence made out from the reading of the complaint and as such, the question of registration of FIR does not arise and that therefore, the petition is liable to be dismissed.

4. The main and only reason canvassed by the petitioner to condone the delay is that since he is working in Koodankulam Nuclear Power Project, he could not take leave except on medical emergency, but the learned Senior counsel appearing for the second respondent would submit that the petitioner had taken 30 days leave between the order passed by the



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Magistrate Court and filing of the revision and that the petitioner has not come with clean hands and the same is vitiated by perjury. He has also produced the copy of attendance report of the petitioner for the period between 26.05.2022 to 12.06.2023, wherein it is evident that the petitioner had taken leave.

5. The learned Senior Counsel appearing for the petitioner would submit that the petitioner had taken short spell of leave on the grounds of illness and the same is not sufficient enough to come over to Madurai to inform his counsel for filing the revision.

6. As rightly pointed out by the learned Senior Counsel for the second respondent, it is not necessary for the petitioner to come over to Madurai to inform his counsel for filing the revision, he could have very well contacted him and informed about his intention to prefer a revision. As rightly pointed out by the learned Senior Counsel for the second respondent, there was a delay of 214 days, which is inordinate.



7. At this juncture, it is necessary to refer the decisions relied on the learned Senior counsel for the petitioner.

***(i) State (NCT of Delhi) Vs. Ahmed Jaan reported in (2008) 14***

***SCC 582 :***

*12. We find that the appellant had indicated the reasons for the delay in filing and re-filing the revision petition. The High Court unfortunately did not deal with those explanations and merely stated that the delay has not been explained. The High Court was required to examine the correctness of the explanation given, keeping in view the principles laid down by this Court in several cases. According to us, the explanations offered were plausible and deserved to be accepted. Accordingly, we set aside the impugned order of the High Court and remit the matter to it to hear the Criminal Revision on merits. It is made clear that we have not expressed any opinion on merits.*

***(ii) M/s. Alagu Pharmacy and others Vs. N. Magudeswari reported***

***in 2018 8 SCC 311 :***

*15. In the circumstances, in our considered view, the order passed by the appellate court was absolutely correct and did not call for any interference on part of the High Court. We, therefore, allow the present appeals and restore the order dated*



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*19.01.2016 passed by the appellate court in IA No.465 of 2015.*

*The appeal shall now be heard on merits and disposed of in accordance with law. Since there was delay of more than 600 days on part of the appellants, we direct that the appellants shall pay costs of Rs.50,000/- to the respondent which shall be over and above that already imposed by the appellant court and shall be made over within six weeks from this Judgment. The appeals stand allowed in the aforesaid terms.*

***(iii) V.Surendran Nair Vs. The State of Kerala and another reported in 2020 2 Supreme (SC) 829 :***

*6. Though there was delay of five years in challenging the order of taking cognizance having taken the revision, in our view, the High Court could have examined the revision on merits rather than dismissing the same on the question of delay. Considering the submissions advanced on behalf of the appellant, the impugned order is set aside and the matter is remitted back to the High Court for consideration of the same afresh.*

8. In the first case cited above, the learned Additional Sessions Judge has discharged the accused as there was no legal evidence *prima facie* available to show that the respondent has committed the alleged acts and challenging that order, the State has preferred a revision with an



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application to condone the delay; that the said petition was returned for rectification of certain defects and that the High Court has dismissed the said petition and when the same was taken to the Supreme Court in Criminal Appeal, the Supreme Court has specifically observed that the appellant therein had indicated the reasons for the delay in filing and re-filing the revision petition and that since the explanation offered were plausible, deserved to be accepted.

9. In the second case referred above, the landlord by alleging that there was compromise between them and the tenant had filed an eviction petition and got an order for eviction; that the tenant has preferred an appeal, challenging the eviction order on the ground that the compromise was taken by coercion at the police station, along with an application to condone the delay; that the appellate Court condoned the delay by imposing costs; that when the same was challenged by the landlord by preferring a civil revision before this Court, the same was allowed by this Court; that when the same was taken to the Hon'ble Supreme Court; the Hon'ble Supreme Court allowed the appeals and restored the order passed by the Appellate Court and thereby condoned the delay by imposing additional costs.



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10. In the third decision, the Criminal Revision was filed with 5 years delay, but without any application to condone the delay and that since the High Court dismissed the revision on the ground of delay, the same was taken to the Supreme Court and that the Supreme Court, by observing that the High Court could have examined the revision on merits rather than dismissing the same on the question of delay.

11. The above decisions cannot be applied to the case on hand. The petitioner has filed a petition under Section 156(3) Cr.P.C., seeking direction to the first respondent to register the case and proceed with the same. The learned Judicial Magistrate, by specifically observing that no cognizable offence is disclosed, dismissed the same. Challenging the order, the present criminal revision came to be filed.

12. According to the petitioner, the second respondent has been appointed as Chairman of Koodankulam Employees Welfare Club by the Power Plan. One other important aspect to be noted is that the second respondent is going to retire in the month of July 2023 on attaining the superannuation. Condoning delay or not, would depend upon on the facts



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and circumstances of the each case and no straight jacket formula can be applied to all cases. As rightly pointed out by the learned counsel for the second respondent, though the petitioner has preferred a complaint before the jurisdictional Police on 25.02.2021, after the lapse of nearly one year, he sent the complaint to the Superintendent of Police, Tirunelveli on 21.02.2022.

13. The contention of the second respondent that since he is going to retire in July 2023, the petitioner, with an ulterior motive to create issues and problem at the time of retirement, has filed the above case, cannot be rejected as one without substance. As already pointed out, except his inability to take leave, the petitioner has not canvassed any reason or acceptable explanation for the inordinate delay of 214 days.

14. Considering the facts and circumstances of the case and also the fact that the petitioner has miserably failed to canvass any valid reason or explanation for the delay, this Court is not inclined to condone the delay. Hence, this Court concludes that the above petition is devoid of merits and the same is liable to be dismissed.



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15. In the result, the Criminal Miscellaneous Petition is dismissed.

The Criminal Revision Case is rejected at the SR stage itself.

**07.07.2023**

NCC : Yes/No  
Index : Yes / No  
Internet : Yes / No  
das

To

- 1.The Inspector of Police,  
Koodankulam Police Station,  
Koodankulam,  
Tirunelveli District – 627 120.
- 2.The Judicial Magistrate,  
Radhapuram.



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**K.MURALI SHANKAR,J.**

das

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