



Crl.R.C.No.1510 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.06.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.R.C.No.1510 of 2022

And

Crl.M.P.No.17545 of 2022

B.V.Ramesh

... Petitioner

Vs.

1.M.Rajeshkumar

2.State represented by,
The Inspector of Police,
Tirutani Police Station,
Crime No.113 of 2007,
Thiruvallur District.

... Respondents

Prayer:

Criminal Revision Case filed under Section 397 r/w. 401 of Criminal Procedure Code, seeking to set aside the order dated 13.09.2022 made in Cr.M.P.No.5329 of 2021 on the file of the learned Principal District and Sessions Court, Thiruvallur.

For Petitioner : Mr.N.Manoharan

For Respondents : Mr.P.Dayalan for R1
Mr.A.Gopinath for R2
Government Advocate (Crl. Side)



CrI.R.C.No.1510 of 2022

ORDER

WEB COPY

The criminal revision case has been filed seeking to set aside the order dated 13.09.2022 made in Cr.M.P.No.5329 of 2021 on the file of the Principal District and Sessions Court, Thiruvallur.

2.The petitioner is the defacto complainant in C.C.No.319 of 2009 on the file of the learned Judicial Magistrate, Tiruttani and he is the accused in C.C.No.320 of 2009 on the file of the very same Court. C.C.No.319 of 2009 ended in conviction against which the first respondent preferred CrI.A.No.73 of 2019 before the I Additional District and Sessions Court, Tiruvallur and the same was dismissed on 03.03.2020 and challenging the same the first respondent filed CrI.R.C.No.293 of 2021 and the said revision was partly allowed with certain directions by this Court on 09.09.2022. C.C.No.320 of 2009 ended in acquittal on 20.05.2019, against which the first respondent preferred appeal with delay before the Principal District and Sessions Court, Thiruvallur and along with it filed Cr.M.P.No.5329 of 2021 seeking to condone the delay of 358 days in preferring the appeal and the said petition was allowed on 13.09.2022. Challenging the same, the petitioner has filed this revision.



Crl.R.C.No.1510 of 2022

WEB COPY

3.The learned counsel for the petitioner submitted that the appeal time is 30 days from the date of receipt of the judgment. The first respondent, for condoning the period of delay had stated that due to COVID – 19, he was unable to contact his counsel, however, the COVID – 19 lockdown came into effect only from 24.03.2020, whereas the appeal period had expired even before that. The learned counsel further submitted that the first respondent preferred the appeal with the delay of 904 days however, he calculated the delay as 358 days and the Court below, without any sufficient reasons allowed the petition filed by the first respondent which is not sustainable one.

4.The learned counsel for the first respondent submitted that though result of both C.C.No.319 of 2009 and C.C.No.320 of 2009 was known on 20.05.2019, challenging the order passed in C.C.No.319 of 2009 the first respondent preferred Crl.A.No.73 of 2019 before the I Additional District and Sessions Court, Tiruvallur and the same was dismissed on 03.03.2020 and challenging the same the first respondent filed Crl.R.C.No.293 of 2021 and the said revision was partly allowed with certain directions by this Court on



CrI.R.C.No.1510 of 2022

09.09.2022. Hence, there was a delay in preferring appeal as against the order passed in C.C.No.320 of 2009 and the delay was rightly condoned by the trial Court.

5.The learned counsel for the first respondent further submitted that the Apex Court took suo motu cognizance of the difficulties faced by the litigants in filing petitions/ applications/ suits/ appeals/ all other quasi proceedings within the period of limitation due to the outbreak of COVID – 19 pandemic in Suo Motu Writ Petition (C) No.3 of 2020 and excluded the period from 15.03.2020 till 28.02.2022 for the purpose of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi judicial proceedings. Hence, the impugned order warrants no interference.

6.Per contra, the learned counsel for the petitioner relied upon the decision of the Hon'ble Apex Court reported in **[2024] 4 S.C.R.241 [Pathupati Subba Reddy (Died) by L.Rs. And Others Vs. The Special Deputy Collector (LA)]**, the relevant portion of which reads as follows:

*"26. On a harmonious consideration of the provisions of the law, as aforesaid, and the law **laid down** by this Court, it is evident that:*



(i) Law of limitation is based upon public policy that there should be an end to litigation by forfeiting the right to remedy rather than the right itself;

(ii) A right or the remedy that has not been exercised or availed of for a long time must come to an end or cease to exist after a fixed period of time;

(iii) The provisions of the [Limitation Act](#) have to be construed differently, such as [Section 3](#) has to be construed in a strict sense whereas [Section 5](#) has to be construed liberally;

(iv) In order to advance substantial justice, though liberal approach, justice-oriented approach or cause of substantial justice may be kept in mind but the same cannot be used to defeat the substantial law of limitation contained in [Section 3](#) of the Limitation Act;

(v) Courts are empowered to exercise discretion to condone the delay if sufficient cause had been explained, but that exercise of power is discretionary in nature and may not be exercised even if sufficient cause is established for various factors such as, where there is inordinate delay, negligence and want of due diligence;

(vi) Merely some persons obtained relief in



CrI.R.C.No.1510 of 2022

similar matter, it does not mean that others are also entitled to the same benefit if the court is not satisfied with the cause shown for the delay in filing the appeal;

(vii) Merits of the case are not required to be considered in condoning the delay; and

(viii) Delay condonation application has to be decided on the parameters laid down for condoning the delay and condoning the delay for the reason that the conditions have been imposed, tantamounts to disregarding the statutory provision."

7. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the first respondent as well as the learned Government Advocate (CrI. Side) appearing for the second respondent.

8. The facts of the case is not in dispute. Admittedly, the first respondent preferred appeal as against the order dated 20.05.2019 in C.C.No.320 of 2009 with delay before the Principal District and Sessions Court, Thiruvallur and along with it filed Cr.M.P.No.5329 of 2021 seeking to condone the delay of 358 days in preferring the appeal and the said petition was allowed on 13.09.2022. It is equally



CrI.R.C.No.1510 of 2022

undisputed fact that the appeal time is 30 days from the date of

WEB COPY

receipt of the judgment. The first respondent, for condoning the period of delay had stated that due to COVID – 19, he was unable to contact his counsel, however, the COVID – 19 lockdown came into effect only from 24.03.2020, whereas the appeal period had expired even before that. The Court below, without any sufficient reasons allowed the petition filed by the first respondent which is not sustainable one.

9.Hence, applying the ratio laid down by the Hon'ble Apex Court in **[2024] 4 S.C.R.241 [Pathupati Subba Reddy (Died) by L.Rs. And Others Vs. The Special Deputy Collector (LA)]**, the order dated 13.09.2022 in Cr.M.P.No.5329 of 2021 on the file of the Principal District and Sessions Court, Thiruvallur, is set aside.

10.This revision is allowed. Consequently, the connected miscellaneous petition is closed.

11.06.2024

pri

Index: Yes/ No

7/8



WEB COPY



Crl.R.C.No.1510 of 2022

Speaking Order: Yes/ No
NCC: Yes/ No

M.DHANDAPANI,J.
pri

To

- 1.The Principal District and Sessions Court,
Thiruvallur.
- 2.The Inspector of Police,
Tirutani Police Station,
Thiruvallur District.
Crime No.113 of 2007,

Crl.R.C.No.1510 of 2022
And
Crl.M.P.No.17545 of 2022

11.06.2024