



CRL MP(MD) No.10641 of 2023

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)**

Monday, the Twenty Second day of January Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice K.K. RAMAKRISHNAN

CRL MP(MD) No.10641 of 2023

in

CRL A(MD)SR.No. 25920 of 2023

GOMATHI

... PETITIONER/APPELLANT

Vs

ALPHONSE

... RESPONDENT/RESPONDENT

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to condone the delay of 602 days in filing the petition seeking leave of this Honble Court to appeal from the order of the acquittal passed by the Learned IV Additional Sessions Judge, Tirunelveli in C.A No.4/2018 dated 30.08.2019 by reversing the judgement of the trial court in STC No. 1666 of 2012 dated 06.12.2017.

PRAYER IN CRL A(MD)SR.No. 25920 of 2023:

To call for the records pertaining to the judgment in C.A.No. 4 of 2018 dated 30.08.2019 passed by the Learned IV Additional Sessions Judge, Tirunelveli against STC No. 1666 of 2012 dated 06.12.2017 on the file of the Judicial Magistrate, Ambasamudram and set aside the same.

Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S. VENKATACHALAM.D, Advocate for the petitioner and of MR.SS.KUMAR, Advocate on behalf of the Respondent, the court made the following order:-

<https://www.mhc.tn.gov.in/judis>



CRL MP(MD) No.10641 of 2023

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Reserved on	:	20.12.2023
Pronounced on	:	22.01.2024

CrI.MP.(MD).No.10641 of 2023
in
CrI.A.(MD).SR.No.25920 of 2023

The petitioner who is the defacto complainant in S.T.C.No.1666 of 2012, on the file of the learned Judicial Magistrate, Ambasamuthiram, filed this criminal miscellaneous petition to condone the delay of 602 days in preferring the appeal against the acquittal judgment passed in S.T.C.No.1666 of 2023.

2. According to the petitioner, the respondent borrowed a sum of Rs.3,00,000/- on 04.02.2007. Thereafter, he issued a cheque on 08.06.2012, for a sum of Rs.3,00,000/- for repayment. The petitioner herein has presented the cheque in his account on 25.06.2012 and the same was returned with endorsement "insufficient fund". Thereafter, the petitioner sent a legal notice as per the provision of Section 138 of Negotiable Instrument Act. The same was received and he sent a reply notice and the respondent did not make any payment. Therefore, the petitioner filed a complaint under Section 138 of Negotiable Instrument Act and the same was taken on file in



CRL MP(MD) No.10641 of 2023

S.T.C.No.1666 of 2012.

3. In the said case, the petitioner examined two witnesses and marked Ex.P1 to Ex.P14 and the respondent has examined himself as D.W.1 and marked documents as Ex.D1 to Ex.D8.

4. The learned trial Judge, considering the above case, convicted the respondent. Thereafter, the respondent preferred an appeal in C.A.No.4 of 2018, before the learned Sessions Judge, Tirunelveli and the same was allowed by the impugned judgment dated 30.08.2019, which was not properly intimated by the petitioner's counsel, on account of his health condition. According to the petitioner, he suffered from the disc prolapse in C3 and C4. Due to his health condition, he was not able to move and hence, he has not filed the appeal on time. On the basis of the said reasoning, he filed the appeal before this Court with the medical certificate.

5. The learned counsel for the respondent/accused filed a counter affidavit stating that the condone delay petition along with the appeal is not maintainable. The petitioner has not explained the reason properly for the delay and hence, he seeks for

dismissal.

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CRL MP(MD) No.10641 of 2023

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6. The learned counsel for the petitioner relied on the following judgments of the Hon'ble Supreme Court:

(i) In the case on Ajay Dabra Vs. Pyare Ram & Ors, in S.L.P.(C).No.15793 of 2019.

(ii) In the case of Mangu Ram & another Vs. Municipal Corporation of Delhi reported in 1975 CDJ SC 142.

7. The learned counsel for the respondent circulated the order of this Court in M.P.Nos.1 and 1 of 2012 in T.C.A.SR.Nos.32642 & 32644 of 2012, dated 21.09.2023, after the case was reserved for orders.

8. According to the learned counsel for the respondent, the delay was not properly explained. No sufficient cause was furnished by the petitioner. Hence, the inordinate delay of 602 days cannot be condoned.

9. This Court considered the rival submissions made on either side and perused the materials available on record.

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CRL MP(MD) No.10641 of 2023

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10. The petitioner herein is the complainant in Section 138 proceedings. The learned trial Judge convicted the respondent. As against the same, he preferred the appeal, which was allowed. Therefore, the petitioner is entitled to file the statutory appeal as per the Act.

11. The learned counsel for the petitioner submitted that the application under Section 5 of the Act with the appeal filed against the acquittal is maintainable. The Hon'ble Supreme Court much earlier in 1976 1 SCC 392, has held that Section 5 is applicable to the cases arising out of the appeal against acquittal. The said principle is subsequently followed in various judgments. Hence, the plea of the respondent under Section 5 is not applicable, is not accepted.

12. The learned counsel for the petitioner in the affidavit specifically stated that he is suffering from the disc prolapse and for that, he has produced the detailed medical summaries. The respondent is not seriously disputing the said medical certificate in his counter. He only stated that the delay was not properly explained. In view of the above factual circumstances, this Court prima facie, is satisfied that the petitioner suffered from the disc prolapse in C3 and C4. Hence, the reasoning of the



CRL MP(MD) No.10641 of 2023

petitioner for the delay in preferring the appeal is properly explained and the reasons stated in the affidavit are also bonafide one. Hence, this Court is satisfied with the explanation given by the petitioner. Accordingly, the delay of 602 days in preferring the appeal is condoned.

13.The learned counsel for the respondent stated that the judgment of the Division Bench of this Court in M.P.Nos.1 and 1 of 2012 in T.C.A.SR.Nos.32642 and 32644 of 2012, is not applicable to the present case. In the said case, there is a huge delay of 1072 days. The Division Bench of this Court has held that there is a negligence and inaction and lack of bonafide on the part of the petitioner. But in this case, this Court has not found the said inaction and the negligence on the part of the petitioner. He approached this Court with the delay, only on the ground that he suffered from disc prolapse. Furthermore, statutory appeal cannot be curtailed, when the petitioner adduced the bonafide reason and substantiated the same through the medical records. It is a well settled principle that the length of delay is not material one and bonafide and acceptable reason is the criteria to condone the delay. The Hon'ble Supreme Court repeatedly held that in condoning the delay, the Court is duty bound to take a pragmatic approach. In this case, the petitioner herein satisfied the above ingredients to condone the delay.



CRL MP(MD) No.10641 of 2023

14. In the result, this Criminal Miscellaneous Petition stands allowed .

sd/-

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/02/2024

Sub-Assistant Registrar
(C.S.I /II /III /IV)

Madurai Bench of Madras High Court,
Madurai - 625 023.

SBN
TO

- 1 THE IV ADDITIONAL SESSIONS JUDGE, TIRUNELVELI.
- 2 THE JUDICIAL MAGISTRATE, AMBASAMUDRAM.
- 3 DO THROUGH:
THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.

ORDER
IN

CRL MP(MD) No.10641 of 2023
in

CRL A(MD)SR.No. 25920 of 2023
Date :22/01/2024

PKP/JGB/SAR /13.02.2024/ 7P/ 4C

Madurai Bench of Madras High Court is issuing certified
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