



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	20.12.2023
Pronounced on	:	19.01.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CrI.MP.(MD).No.11765 of 2023
in
CrI.R.C.(MD)SR.No.30409 of 2023

P.Ganesan

... Petitioner

Vs.

1.Joseph Edward,

2.Prabhu Baskar

3.The Inspector of Police,
Valliyoor Police Station,
Valliyoor,
Tirunelveli District.

Prayer: This Criminal Miscellaneous Petition filed under Section 5 of the Limitation Act, to condone the delay of 435 days in filing the Criminal Revision Case against the order dated 29.10.2021 passed by the Judicial Magistrate, Valliyoor, in Cr.M.P.No.70 of 2019, in dismissing the complaint against the second respondent.



For Petitioner : Mr.T.Lenin Kumar

For Respondents : No appearance for R1

: Mr.N.Mohideen Basha for R2

: Mr.M.Vaikkam Karunanithi
Government Advocate (Crl.Side) For R3

ORDER

The petitioner filed a criminal revision case with a delay of 435 days.

2. The case of the petitioner is that he is running a Lorry Transport business in the name and style of "GBR Transport". The first respondent is running a MRF brand Tyre vending shop near Valliyoor old bus stand. The petitioner filed a private complaint against the second respondent, Hence, the second respondent was waiting to wreak revenge on the petitioner. The petitioner used to purchase Tyres from the first respondent's shop. In the year 2017, the first respondent purchased bricks worth about Rs.1,24,650/- from the petitioner on credit basis. On 19.05.2017, the petitioner purchased two set of tyres worth about Rs.78,000/- from the first respondent. Since the first respondent had to



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pay the price of the bricks, the petitioner asked him to adjust the price of tyre in the said amount and pay the remaining amount of Rs.46,650/-. At this juncture, when the petitioner enquired the price of the tyre with other MRF dealers, he came to know that the first respondent sold the tyres at exorbitant rate. Therefore, the petitioner stopped purchasing tyres from the first respondent. Even after one year, the first respondent failed to pay the balance amount of Rs.46,000/-. Whenever, the petitioner asked him to pay the balance amount, he was dodging about. On 24.07.2018, at about 10.00 a.m., the petitioner instructed his employee to collect the balance amount from the first respondent. As the first respondent asked the petitioner to come to his shop to collect the amount, he went there at about 10.30 a.m., and was standing near a fruit shop. At that time the first respondent armed with Aruval, abused the petitioner by using filthy language and attempted to hack him. Since the petitioner flinched, the cut fell on a tree. When the petitioner attempted to escape from the occurrence place, the first respondent waylaid him by kicking down the petitioner's two wheeler. The first respondent while doing so, told that on the instruction of the second respondent only, he was doing the same. In continuation of the said incident, the first respondent assaulted the



petitioner brutally and threatened the petitioner with dire consequences.

Therefore, on 24.07.2018, the petitioner lodged a complaint before the third respondent. But, after receipt of the complaint, the third respondent did not come forward to act upon the same. On 21.08.2018, the petitioner sent a complaint to the Superintendent of Police, Tirunelveli District. Thereafter, the petitioner herein preferred a private complaint under Section 156(3) of Cr.P.C., before the Judicial Magistrate, Valliyoor, and the same was taken on file in CrI.M.P.No.70 of 2019.

3. The same was dismissed by the learned trial Judge. The learned trial Judge issued a direction to register the FIR against the first accused alone and dismissed the case, in respect of the second respondent namely the Sub Inspector of the jurisdictional Police. Challenging the said portion of the order, the petitioner filed this criminal revision case with a delay.

4. The order was passed on 29.10.2021, the petitioner filed a copy application on 09.11.2021. But, he filed a petition with a delay of 435 days. In the affidavit it is stated that his counsel Mr.Jeyabal was



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convicted in another criminal case and confined in prison and he kept the certified copy in his house and he could not hand over the same to the petitioner. When the house was cleaned by the said Jeyabal's son, he found the dismissal order. Thereafter, he handed over the order to the petitioner and hence, the petitioner filed this revision case with delay of 435 days.

5. The said averment was denied by the learned counsel for the second respondent by filing detailed counter. It is stated that the petitioner has six previous cases and he is a history sheeted rowdy and made false averment against the respondent. In this case, he made a complaint before the jurisdictional police against the first respondent and the case in counter was registered. In the said case, the second respondent is not an investigating officer and he has no role in the case. Further, he suppressed the pending S.C.No.448 of 2022, on the file of the learned Assistant Sessions Judge, Valliyoor. The alleged date of the conviction of the said advocate is much after the receipt of the complaint. He contended that false affidavit has been filed as if the advocate Jeyabal was confined in prison and the same was not correct and hence he seeks



for dismissal of this petition for the false reasons to condone the delay.

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

7. The petitioner filed the criminal revision case with delay of 435 days, by producing the certified copy of the order dated 15.11.2021. There is no explanation for filing the revision after the said receipt of the certified copy. On the other hand, he stated a reason that his advocate Jeyabal was convicted and confined in prison and thereafter the said advocate's son furnished the copy. In the affidavit, there is no averment on which date the said advocate was confined in prison and on which date the advocate's son furnished the copies.

8. This Court perused the records and also the counter affidavit filed by the second respondent. In counter, it is stated that he has given the false explanation and also he has number of previous cases. The second respondent has not made false averments against the petitioner. The third respondent is not the investigating officer. He has no role in the



registration of the FIR against himself in the complaint made by the first respondent.

9. In view of the above circumstances, this Court has not accepted the reason stated by the petitioner and the petitioner's affidavit is without proper particulars and also the reasoning is against the record. Further, there was no supporting evidence from the advocate's son about the furnishing of the certified copy after the arrest of the petitioner's counsel. In the absence of the any material, in order to substantiate the case of the petitioner, this court is not inclined to accept the delay of 435 days. More particularly, against the second respondent, who is working as the Sub-Inspector of Police in the Department.

10. Accordingly, this Criminal Miscellaneous Petition stands dismissed.

19.01.2024

NCC :Yes / No
Index :Yes / No
Internet :Yes / No
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K.K.RAMAKRISHNAN, J.

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