



WEB COPY



Crl.R.C(MD)No.1098 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.10.2023

Pronounced on : 08.02.2024

CORAM:

THE HONOURABLE MR.JUSTICE P.VADAMALAI

Crl.R.C(MD)No.1098 of 2023

and

Crl.M.P(MD)No.14111 of 2023

Ranjith @ Ranjikumar

... Petitioner/Accused

Vs.

State represented by
The Inspector of Police,
Kulithalai Police Station,
Karur District.
(Crime No.344 of 2018)

... Respondent/Complainant

PRAYER : This Criminal Revision has been filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records relating to the order, dated 18.04.2023 in C.M.P.No.1119 of 2023 in Crime No.344 of 2018 on the file of the Judicial Magistrate No.II, Kulithalai and set-aside the same.

For Petitioner : Mr.M.Suresh

For Respondent : Mr.S.Manikandan
Government Advocate (Crl.side)



ORDER

WEB COPY

This Criminal Revision Case is filed to set aside the order, dated 18.04.2023 passed in C.M.P.No.1119 of 2023 on the file of the learned Judicial Magistrate No.II, Kulithalai.

2.The brief facts of the case:

A case was registered by the respondent police in Crime No.344 of 2018 for the offence under Sections 279, 304(A) of IPC on 11.07.2018 upon the complaint lodged by the complainant therein that on 11.07.2018 at 3.30 p.m. a road accident was taken place at Thanthai Periyar Bridge, Musiri and the complainant's brother died due to accidental injuries. As per section 468 of Cr.P.C. final report has to be filed by the respondent police within three years. But, the respondent police filed a final report on 18.04.2023 along with the petition under Section 473 of Cr.P.C. before the learned Judicial Magistrate No.II, Kulithalai and the same was allowed. Being aggrieved by the order, the petitioner/accused preferred this Criminal Revision Case.

3. Heard both side and perused the records in this Criminal Revision Case.



4. The learned counsel appearing for the revision petitioner has submitted that there was no reason assigned for filing belated final report along with delay condone petition. The delay condone petition was ordered behind back the petitioner/accused and no notice was issued to the petitioner/accused. The trial Court has not recorded any reason for condoning the delay. No opportunity of hearing was given to the petitioner/accused to oppose the application filed under Section 473 of Cr.P.C. before taking cognizance. It is a settled proposition laid down by the Hon'ble Supreme Court and the High Court of Madras that the power under Section 473 of Cr.P.C. before being exercised, an opportunity by way of notice should be given to the accused. In support his contention the learned counsel for the petitioner relied on the following citations:

(1) (2009) 3 Supreme Court Cases (Crl.) 531 (P.K.Choudhury /v/ Commander, Border Road Task Force (GREF), wherein it is held in paragraph Nos.10 and 11 as follows:

"10. The learned Judicial Magistrate did not apply his mind on the said averments. It did not issue any notice upon the appellant to show cause as to why the delay shall not be condoned. Before condoning the delay the appellant was not heard. In State of Maharashtra Vs. Sharadchandra Vinayak Dongre and Others [(1995) 1 SCC 42] this Court held;



WEB COPY



Crl.R.C(MD)No.1098 of 2023

"5. In our view, the High Court was perfectly justified in holding that the delay, if any, for launching the prosecution, could not have been condoned without notice to the respondents and behind their back and without recording any reasons for condonation of the delay. However, having come to that conclusion, it would have been appropriate for the High Court, without going into the merits of the case to have remitted the case to the trial court, with a direction to decide the application for condonation of delay afresh after hearing both sides. The High Court however, did not adopt that course and proceeded further to hold that the trial court could not have taken cognizance of the offence in view of the application filed by the prosecution seeking permission of the Court to file a "supplementary chargesheet" on the basis of an "incomplete charge-sheet" and quashed the order of the CJM dated 21-11-1986 on this ground also. This view of the High Court, in the facts and circumstances of the case is patently erroneous."

11. In view of the aforesaid decision, there cannot be any doubt whatsoever that appellant was entitled to get an opportunity of being heard before the delay could be condoned."

(2) Order dated 02.11.2016 passed in Crl.R.C.No.1045 of 2011 on

the file of the High Court Judicature at Madras, wherein it is held in



paragraph No.13 as follows:

“13. under analogous situation before us, in Jothimani case (supra) my esteemed brother Hon’ble Justice K.N.Basha referring to the said Apex Court decision held that the power under section 473 Cr.P.C. before being exercised, opportunity by way of a notice shall be given to the accused. Further, it should be exercised by passing a reasoned order, proper reason must be given.”

5. The learned Government Advocate (Crl.side) for the respondent contended that the charge sheet was made ready on 20.07.2018, but due to pressure of work it was omitted to file before the concerned court immediately. However, he submits that the matter may be remanded back for fresh disposal.

6. On hearing both and on perusal of records, it is clear that FIR was registered on 11.07.2018 and the petitioner/accused has been on bail. However, the charge sheet was filed on 18.04.2023 along with delay condone petition. But, no notice was given to the accused upon the petition filed by the respondent police to condone the delay in filing the charge sheet after lapse of 4 years. The impugned order has been passed allowing the delay condone petition without notice to the petitioner/accused and the



Crl.R.C(MD)No.1098 of 2023

same is passed behind his back. In the above circumstances, the above citations relied upon by the petitioner side squarely applies to the facts of the case. Considering the above facts and circumstances, this Criminal Revision Case is to be allowed.

7. In the result, this Criminal Revision Case is allowed. The impugned order passed by the learned Judicial Magistrate No.II, Kulithalai in C.M.P.No.1119 of 2023, dated 18.04.2023 is set aside. The matter is remitted back to the learned Judicial Magistrate No.II, Kulithalai, for fresh disposal. The learned Magistrate is directed to restore the C.M.P.No.1119 of 2023 on his file, fix the date of hearing and send notice to the accused and prosecution and also shall give sufficient opportunities to both sides and pass order on merits according to law. Consequently, the connected Miscellaneous Petition is closed.

08.02.2024

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

VSD



Crl.R.C(MD)No.1098 of 2023

WEB COPY

To

- 1.The Judicial Magistrate No.II,
Kulithalai.
- 2.The Inspector of Police,
Kulithalai Police Station,
Karur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.R.C(MD)No.1098 of 2023

P.VADAMALAI, J.

VSD

Pre - Delivery Order made in
Crl.R.C(MD)No.1098 of 2023
and
Crl.M.P(MD)No.14111 of 2023

08.02.2024