

Prema Vs. S. Prasanna

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Court : Karnataka

Decided On : Mar-10-2016

Judge : H. Billappa

Appeal No. : Criminal Appeal No. 1469 of 2015

Appellant : Prema

Respondent : S. Prasanna

Judgement :

H. Billappa, J.

1. I.A.1/15 has been filed by the appellant praying to grant leave to file the appeal. I.A.2/15 has been filed by the appellant praying to condone the delay of 311 days in filing the appeal.

2. It is stated, the appellant had filed private complaint in PCR No. 25512/2013 on the file of the XXII Addl. CMM, Bengaluru for the offence punishable under section 138 of the N.I. Act. The complaint was dismissed for non-prosecution on 24.11.2014. It was challenged in Criminal .P.No. 8146/2014. The said petition was disposed of reserving liberty to the petitioner to avail the statutory remedy. Thereafter, the petitioner preferred criminal revision petition before the Sessions Court. It was withdrawn with liberty to file the appeal. Thereafter, the present appeal has been filed. Therefore, there is delay of 311 days in filing the appeal. It

may be condoned and leave may be granted to file the appeal.

3. The learned counsel for the respondent opposes the applications contending that the respondent is harassed by the appellant by filing case after case.

4. The learned counsel for the appellant submitted that the delay is properly explained and therefore, it may be condoned and the appellant may be permitted to file the appeal.

5. I have carefully considered the submissions made by the learned counsel for the parties.

6. It is relevant to note, the appellant had filed private complaint for the offence punishable under section 138 of the N.I.Act. At the stage of evidence, the complaint has been dismissed for non-prosecution on 24.11.2014. The appellant has filed criminal petition in Criminal petition No. 8146/2014 before this Court. The said petition has been disposed of reserving liberty to the petitioner to pursue the statutory remedy. The appellant instead of filing the appeal before this Court has approached the Sessions Court in revision petition. Subsequently, after withdrawing the revision petition the present appeal has been filed. Therefore, there is delay in filing the appeal. It needs to be condoned in the interest of justice. Accordingly, I.A. Nos. 1 and 2 of 2015 are hereby allowed. The delay in filing the appeal is condoned and the appellant is permitted to file the appeal.

7. Heard the learned counsel for the parties on merits.

8. It is relevant to note, the appellant had filed private complaint for the offence punishable under Section 138 of the NI Act. After taking cognizance, the case has been registered in C.C. No. 7586/2014. It was dismissed for non-prosecution on 24.11.2014.

9. Aggrieved by that, the appellant has filed this appeal.

10. The learned counsel for the complainant contended that the Trial Court was not justified in dismissing the complaint for non-prosecution. It has resulted in miscarriage of justice. Therefore, the impugned order cannot be sustained in law.

It may be set aside and an opportunity may be given to the appellant to lead his evidence.

11. As against this, the learned counsel for the respondent submitted that the respondent is harassed by the appellant by filing false case. Therefore, the impugned order does not call for interference.

12. I have carefully considered the submissions made by the learned counsel for the parties.

13. It is relevant to note, the appellant had filed private complaint for the offence punishable under section 138 of the N.I Act. The appellant has led his evidence. The case was posted to 24.11.2014 for cross-examination of PW-1 i.e., the appellant. On 24.11.2014, neither the appellant nor the respondent were present before the Court. Therefore, the complaint has been dismissed for non-prosecution; It has resulted in miscarriage of justice. No doubt, the respondent has suffered some inconvenience. It can be compensated by awarding reasonable cost.

14. Accordingly, the appeal is allowed and the impugned order dated 24.11.2014 passed by the XXII ACMM, Bengaluru, in C.C. No. 7586/2014 is hereby set aside. C.C. No. 7586/2014 is restored to file. The matter is remitted to XXII ACMM, Bengaluru, to consider it on merits. The appellant shall pay cost of Rs. 5,000/- to the respondent before the Trial Court.

15. The parties shall appear before the XXII ACMM, Bengaluru, on 28.3.2015 without further notice from the Trial Court.

Appeal allowed.

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