

Petitioner Vs. Respondent

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Court : Chennai

Decided On : Oct-20-2016

Judge : M. Venugopal

Appeal No. : Crl.M.P.No. 9375 of 2016 in Crl.A.Sr.No. 37877 of 2016

Appellant : Petitioner

Respondent : Respondent

Judgement :

M. Venugopal, J.

1. Heard Mr.S.Sounthar, Learned counsel for the Petitioner/ Appellant and Mrs.Jayasri Baskar, Learned Standing Counsel for the Respondent.

2. It comes to be known that the Petitioner/Appellant/ Complainant has preferred the Crl.M.P.No.9375 of 2016 in Crl.A. Sr.No.37877 of 2016 to condone the delay of 88 days in filing the Special Leave Petition for preferring Criminal Appeal against the Order/ Judgment of acquittal dated 04.04.2016 passed in S.T.C.No.6 of 2007 by the Learned Judicial Magistrate No.II, Chidambaram.

3. According to the Petitioner, the order of acquittal was passed by the trial Court in S.T.C.No.6 of 2007 on 04.04.2016 in as much as the Petitioner had developed severe form of jaundice during 2nd week of April, 2016, he took native treatment

and recovered only during the 1st week of June 2016. Thereafter, he met his counsel and instructed him to obtain the certified copy of the Judgment in question. Indeed, a copy application was filed on 04.06.2016 which was made ready on 04.06.2016 itself. Owing to his illness, which recurred again, he was advised to take complete rest and also informed not to take food from outside. Later he had recovered from the illness only during the last week of August 2016. Immediately, he has preferred the present Criminal Appeal in CrI.A.Sr.No.37877 of 2016 with a Special Leave Petition and in this process, there has occasioned a delay of 88 days in filing a petition seeking Special Leave to prefer Criminal Appeal. The said delay is neither wilful nor wanton but due to the aforesaid reasons.

4. Conversely, it is the submission of the Learned Counsel for the Respondent/Accused that the trial Court had dismissed the complaint in S.T.C.No.6 of 2007 on 04.04.2016 because of the reason that the Complainant as well as the Counsel for the Complainant had not appeared on the hearing date and consequently, dismissed the complaint filed under Section 138 of the Negotiable Instruments Act and resultantly, acquitted the Accused.

5. Furthermore, it is represented on behalf of the Respondent/ Accused that the Petitioner/Appellant/Complainant had merely in his affidavit, at paragraph 4, had simply mentioned that he was affected with jaundice and once again the said decease had recurred and later on recovered from the said illness during the last week of August 2016 and in short, the reasons ascribed on behalf of the Petitioner/Appellant/ Complainant are fanciful, not bona fide and hence, the present Criminal Appeal is liable to be dismissed in the interest of Justice.

6. It is to be noted that when a Court of Law deals with an Application/Petition for condonation of delay, then, it is to adopt a lenient and liberal approach and also not to adopt either a hyper technical approach or pedantic approach. By condoning the delay of 88 days in the present case in question, the maximum thing that would happen is there is a possibility for the Petitioner/Appellant/ Complainant to take part in the main arena of proceedings and a chance being provided to the litigant for his 'cause' being decided on merits. Per contra, if the

delay condonation petition is dismissed at the threshold, then, there is a possibility to the effect that even a meritorious case can be thrown out.

7. In view of the fact that the Petitioner/Appellant/ Complainant, in his affidavit, at para 4, had stated that he could not met his counsel since he developed severe jaundice and later once again the said illness had recurred and subsequently, he had recovered from the same during the last week of August 2016, this Court, by taking a lenient and liberal view and also to advance the cause of Justice, condones the delay of 88 days in question, subject to the condition that the Petitioner/Appellant shall pay the cost of Rs.1000/- (Rupees Thousand Only) to the Tamil Nadu State Legal Services Authority, High Court, Madras on or before 14.11.2016, failing which, it is made clear that the Petition shall stand dismissed automatically without any further reference to this Court.

8. In fine, the Crl.M.P.No.9375 of 2016 is allowed.

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