

(2010) 11 MAD CK 0106

In the Madras High Court

Case No : Criminal R.C. No"s. 814 to 816 of 2005

S. Sanju

APPELLANT

Vs

Prakash Jain
Subash Bafna @ S.S. Jain Vs Sunik
Kumar and Lalchand

RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 357(2)

Citation : (2010) 11 MAD CK 0106

Hon'ble Judges : T. Sudanthiram, J

Bench : Single Bench

Advocate : Gopinath for Shekar and Shekar Law Firm, for the Appellant; No
Appearance, for the Respondent

Final Decision : Allowed

Judgement

T. Sudanthiram, J.—The revision Petitioner in CrI. R.C. No. 814 of 2005 viz., S. Sanju and the revision Petitioner in CrI.R.C. Nos. 815 and

816 of 2005 viz., Subash Bafna @ S.S. Jain were convicted by the learned VIII Metropolitan Magistrate, George Town, Chennai, in C.C. Nos.

7303, 7304 and 7306 of 2004 respectively. Against the said conviction, the revision Petitioners have preferred three appeals before the learned

Principal Sessions Judge, Chennai and in preferring the said appeals, there was a delay of 64 days. Seeking condonation of delay, the revision

Petitioners have filed CrI.M.P. Nos. 2320, 2321 and 2322 of 2005 respectively. The learned Sessions Judge had allowed the said petitions

directing the Petitioner in CrI.M.P. No. 2320 of 2005 to deposit a sum of Rs. 1,00,000/-towards compensation amount. As regards the Petitioner

in CrI.M.P. No. 2321 of 2005, he was directed deposit a sum of Rs. 30,000/-

towards compensation amount and as regards the Petitioner in

Crl.M.P. No. 2322 of 2005, he was directed to deposit a sum of Rs. 1,50,000/- towards compensation amount. All the Petitioners were directed

to deposit the amount on or before 04.07.2005 and the trial Court also observed that failing compliance of the condition, the petitions would stand

dismissed. The matter was adjourned to be posted on 05.07.2005. Challenging the order of the learned Sessions Judge directing the revision

Petitioners to pay certain amounts towards compensation in each case, the Petitioners have preferred the above said criminal revision cases before

this Court.

2. The learned Senior Counsel for the revision Petitioners submitted that the appeals were filed challenging the conviction, sentence imposed on the

Petitioners and also the compensation amount awarded. While so, the learned Sessions Judge ought not to have insisted the Petitioners/accused to

pay compensation amount as a condition for condoning the delay. The learned Senior Counsel for the Petitioners further submits that at this stage,

the Petitioners were also not in a position to pay the compensation amount within the stipulated time.

3. Though notice was ordered and served to the Respondents in all the three revisions who are the complainants, they have not appeared before

this Court and there is no representation on their behalf.

4. This Court has considered the submissions made by the learned Counsel for the Petitioners and perused the records.

5. It appears from the Appellate Court records that as the compensation amount as directed by the Appellate Court was not deposited by the

revision Petitioners, the condone delay petitions, filed by them, were dismissed on 05.07.2005. This Court feels that it was not proper for the

Appellate Court to impose the condition precedent for depositing certain amounts for allowing the condone delay applications. It is the duty of the

Court to see whether sufficient reasons are given by the Petitioners for condoning the delay in preferring the appeals. The Court ought to have

considered the reasons given by the Petitioners in the affidavit filed by them seeking condonation of delay. As such, if the Court is convinced with

the reasons given by the Petitioners for the delay in preferring the appeals, then the Court ought to have allowed the applications. It is improper and

illegal for the Appellate Court to direct the Petitioners to deposit certain amounts as a condition for allowing the petitions seeking condonation of delay.

6. Section 357(2) of Code of Criminal Procedure reads as follows:

(2) If the fine is imposed in a case, which is subject to appeal, no such payment shall be made before the period allowed for presenting the appeal

has elapsed, or, if an appeal be presented, before the decision of the appeal.

7. As per the above said provision, even if the compensation amount is awarded from the fine amount imposed, such compensation should not be

disbursed until the appeal is disposed of. Therefore, there is no necessity for the Court to insist the revision Petitioners to deposit a part of the

compensation amount and that too as a condition for allowing the applications seeking condonation of delay in preferring the appeals. This Court

has considered the reasons given in the affidavit filed by the Petitioners before the Appellate Court. In the interest of justice, the delay in preferring

the appeals before the Sessions Court should be condoned.

8. Accordingly, all the three Criminal Revision Cases are allowed. The condone delay petitions filed in Crl.M.P. Nos. 2320, 2321 and 2322 of

2005 respectively before the Sessions Court are also allowed. The learned Principal Sessions Judge, Chennai, is directed to dispose the appeals

within a period of three months after the appeals are numbered and the notice are served on the Respondents.