

Order on I.A. No. I

The Revision Petitioner has filed I.A No. I under section 5 of Limitation Act, praying to condone the delay of 52 days in filing the petition.

In the affidavit, it is stated that the trial court in Crl.M.C 519/2016 after hearing the revision petitioner and after affording reasonable opportunity to render the arguments on maintainability of the recovery petition dated 20.04.2016 viewing the absence of the respondent and their no interest in carrying their case, passed the impugned order dated 02.02.2024 dismissing the recovery petition on 20.04.2016 filed by the respondent department. While dismissing the petition granted liberty to the respondent department to file fresh petition. Thereafter his counsel after coming to know about the order passed by the trial court filed an application for certified copy of the impugned order on 06.02.2024. The same was made available on 28.02.2024. Thereafter, after seeing the impugned order he started collecting necessary documents for filing the said revision. Since the documents are voluminous and older one, under this circumstances, the delay has been crept in preferring the above revision petition. The delay is not intentional or deliberate one. If the delay is not condoned will be put to untold hardship and

injury which cannot be compensated in any manner. Hence prayed to allow the IA No. I.

Heard.

As the delay has been satisfactorily explained and as observed by the Honb'le Apex Court that the courts should adopt the justice oriented approach rather than the iron cast technical approach.

Hence, IA-1 filed u/S.5 of the Limitation Act is allowed.

Sd/-XXX

IV ADJ, Mangaluru.

Order on I.A. No. II

The Revision Petitioner has filed this application under Section 397(1) of Cr.P.C., praying to stay the operation and execution of impugned order dated 02.02.2024 in CrI.Mis. No. 519/2016 passed by IV JMFC, Court, Mangaluru.

In the affidavit, it is stated that the trial court in CrI.M.C 519/2016 after hearing the revision petitioner and after affording reasonable opportunity to render the arguments on maintainability of the recovery petition dated 20.04.2016 viewing the absence of the respondent and their no interest in carrying their case, passed the

impugned order date 02.02.2024 dismissing the recovery petition on 20.04.2016 filed by the respondent department. However, in the said order without any proper and cogent reason and without considering the material available on record placed by him in an unjust and improper manner without speaking order granted liberty to Respondent department to file a fresh petition. The grant of liberty to file fresh recovery petition to the Respondent Department is beyond the jurisdiction of the trial court and not permitted under law. Hence, before this Court with the revision petition challenging the impugned order dated 02-02-2024 which assailed liberty to the Respondent Department to file fresh petition. The Respondent Department inspite of having viewed the earlier order of this Court in Criminal Revision petition 192/2007 and suppressing the order of the trial court dated 21-08-2015 filed recovery petition for the 3rd time changing the cause title as they wish. There are every possibilities of filing one more recovery petition by the Respondent before the trial court. There are every possibilities that Respondent Department may take coercive steps to recover the amount for no fault of him. If the Court does not interfere in the order of the trial court dated 02-02-2024 passed in CrI.Misc.No.519/2016 he will be suffering great amount of loss, hardship and injury and there will be miscarriage of justice to a great extent. Hence, prays to allow the I.A. No. II.

Heard.

As it appears that there is sufficient material to consider the petition on merits and found necessary to stay further proceedings as prayed, if not the very purpose of filing this petition would become infructuous. Hence, I proceed to pass the following;

ORDER

IA No.2 filed under Section 397(1) of Cr.P.C., is hereby allowed.

Consequently, further proceedings in CrI.M.C No. 519/2016 is hereby stayed pending disposal of this petition.

Issue Notice to Respondent by 15-10-2024.

Sd/-XXX

IV Addl. District & Sessions Judge,
D.K., MANGALURU.