

No.I vs 200 Cr.P.C. Against The on 29 April, 2022

Crl.M.P.
Crl.A.No.
Crl.O.P.

RESERVED ON : 09.09.2021
PRONOUNCED ON : 29.04.2022

Crl.M.P.No.7807 of 2021 in
Crl.A.No.SR24987 of 2021 &
Crl.O.P.No.SR24990 of 2021

P.VELMURUGAN, J.

This miscellaneous petition has been filed seeking to condone the delay of 63 days in filing the appeal against the judgment of acquittal passed in C.C.No.675 of 2017 dated 13.11.2019 by the learned Judicial Magistrate No.I, Tiruppur.

2 The petitioner is the Food Safety Officer, Tiruppur Corporation North, Thiruppur District, who has filed a private complaint under Section 200 Cr.P.C. against the respondents for the offence under Sections 51, 59(i) and 63 of Food Safety and Standards Act, 2006 (herein after referred to as “the Act”), before the learned Judicial Magistrate No.I, Tiruppur, which was taken on file in C.C.No.675 of 2017. The trial Court, after hearing both the <https://www.mhc.tn.gov.in/judis> Crl.M.P.No.7807 of 2021 in Crl.A.No.SR24987 of 2021 & Crl.O.P.No.SR24990 of 2021 parties came to the conclusion that the charges against the respondents have not been proved beyond all reasonable doubt and hence by judgment dated 13.11.2019, acquitted the respondents.

3 Against the said judgment of acquittal, the petitioner/complainant has filed the present appeal and since there is delay of 63 days, the petitioner has filed present petition seeking to condone the same along with the petition seeking leave of the Court, since it is an appeal against the acquittal.

4 The learned Government Advocate (Crl.Side) appearing for the petitioner/complainant would submit that after obtaining certified copy of the judgment, opinion was sought for from the Assistant Public Prosecutor, Tiruppur, and the same was received on 03.12.2019. Thereafter, the petitioner sent a proposal to the Designated Officer vide letter dated 03.12.2019, in turn, the Designated Officer forwarded the same to the Commissioner of Tamil Nadu Food Safety Drug Administrative Department <https://www.mhc.tn.gov.in/judis> Crl.M.P.No.7807 of 2021 in Crl.A.No.SR24987 of 2021 & Crl.O.P.No.SR24990 of 2021 and the same was sent to the Secretary to Government, Health and Family Welfare Department for filing an appeal. The Government sent the proposal to the office of the Public Prosecutor, High Court Madras vide letter dated 25.07.2020 and the same was received by the Public Prosecutor Office on 19.08.2020. After perusing the entire record, the Public

Prosecutor, High Court, sent an opinion on 10.09.2020 and on 11.11.2020, the Commissioner of Food Safety Department also sent a Lr.R.No.7724/2017/S7/FSSA dated 15.10.2020 to the Designated Officer, Tiruppur, to file an appeal against the acquittal. Thereafter the petitioner was in the process of collecting relevant documents regarding filing of appeal and due to Covid pandemic, the predecessor could not able to present the appeal in time. Therefore for the above reasons, the delay of 63 days has occurred and hence he prays to condone the same.

5 The learned counsel appearing for the respondents 1 & 2 would submit that to condone the delay the petitioner has stated that they approached many authorities to get sanction, but, the respondents were not <https://www.mhc.tn.gov.in/judis> CrI.M.P.No.7807 of 2021 in CrI.A.No.SR24987 of 2021 & CrI.O.P.No.SR24990 of 2021 informed about the same. Further, they have received the certified copy of the judgment even on 13.11.2019 itself, but the pandemic in India was started only in last week of March 2020, but the petitioner has filed the appeal only on 26.07.2021 with huge delay, for which, the reasons stated by the petitioner cannot be accepted. The learned counsel would further submit that Section 378(5) Cr.P.C., is bar to file appeal against acquittal after expiry of the time limit, where the complainant is a public servant.

6 The learned counsel for the respondents 1 & 2 would further submit that against the judgment of acquittal passed by the Magistrate, appeal will lie only before the Court of Session. To support his contentions, the learned counsel has placed reliance on the judgment of the Full Bench of this Court reported in 2016 (4) CTC 119. Therefore, this petition to condone the delay in filing the appeal against judgment of acquittal passed by the Magistrate has to be dismissed.

<https://www.mhc.tn.gov.in/judis> CrI.M.P.No.7807 of 2021 in CrI.A.No.SR24987 of 2021 & CrI.O.P.No.SR24990 of 2021 7 Heard the learned Government Advocate (CrI.Side) appearing for the petitioner and the learned counsel appearing for the respondents 1 & and perused the materials available on record.

8 The petitioner is the Food Safety Officer and is a public organisation and hence they have to get sanction from various administrative authorities and they have explained the same in detail in the affidavit filed in support of this miscellaneous petition. It is well settled proposition of law that while dealing with the petition seeking to condone the delay, the Court has to see the reasons stated in the affidavit, not the defence. Whether the petitioner has got any substantial ground to maintain the appeal or not and whether the appeal has got any merit are all can be decided only in the appeal and not in this miscellaneous petition seeking condonation of delay.

<https://www.mhc.tn.gov.in/judis> CrI.M.P.No.7807 of 2021 in CrI.A.No.SR24987 of 2021 & CrI.O.P.No.SR24990 of 2021 9 As far as the decision referred to by the learned counsel for the respondent is concerned, a reading of Section 378(1)(b) of Cr.P.C. it is clear that against the judgment of acquittal, with leave of the Court, the complainant can file appeal before the High Court. Therefore, the appeal very well lie before this Court after getting leave of the Court. This Court is satisfied with the reasons stated in the affidavit filed in support of this petition. Hence this Court is inclined to allow this miscellaneous petition.

10 For the foregoing reasons, the miscellaneous petition is allowed and the delay of 63 days in filing the appeal is hereby condoned.

11 Registry is directed to take the petition seeking leave of the Court to file the present appeal against the judgment of acquittal, on file, if it is otherwise in order.

29.04.2022 cgi <https://www.mhc.tn.gov.in/judis> Crl.M.P.No.7807 of 2021 in Crl.A.No.SR24987 of 2021 & Crl.O.P.No.SR24990 of 2021 P.VELMURUGAN, J., cgi Pre-Delivery Order in Crl.M.P.No.7807 of 2021 in Crl.A.No.SR24987 of 2021 & Crl.O.P.No.SR24990 of 2021 29.04.2022 <https://www.mhc.tn.gov.in/judis>