

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2015

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

Crl.R.C.No.227 of 2015

Vijaya Amirtharaj

... Petitioner

vs.

Ajantha

... Respondent

Petition filed under Section 397 r/w Sec.401 Cr.P.C. to call for the records in C.M.P.No.671 of 2015 in Crl.A.No.12 of 2015 on the file of the Principal Sessions Judge at Thiruvallur and peruse the same and set aside the impugned order with regard to condition of deposit Rs.50,000/- order dated 4th March, 2015 in Crl.M.P.No.671 of 2015 in Crl.A.No.12 of 2015.

For Petitioner : Ms.R.Mahalakshmi

O R D E R

Being aggrieved by the condition imposed by the Court below to deposit of Rs.50,000/-for suspension of sentence, in Crl.M.P.No.671 of 2015 in Crl.A.No.12 of 2015, on the file of the learned Principal Sessions Judge, Thiruvallur, revision case is filed.

2. Material on record discloses that on the complaint under Sections 138(A) and 142 of the Negotiable Instruments Act, filed by the respondent, the learned Fast Track Court and Judicial Magistrate, Thiruvallur, has taken cognizance of the same and upon trial in C.C.No.8 of 2014, vide judgment dated 03.02.2014, convicted the petitioner, for six months imprisonment. Under Section 357(3) Cr.P.C., the trial Court has ordered compensation of the cheque amount of Rs.4,50,000/-, to be paid to the respondent, within 30 days from the date of pronouncement of the judgment, in default, to undergo simple imprisonment for one month. Being aggrieved by the same, the petitioner, has preferred Crl.A.No.12 of 2015, with an application Crl.M.P.No.671 of 2015 for suspending the sentence.

3. Reading of the impugned order indicates, that a money deposit for granting suspension of sentence, had been considered by the Court below, and that a decision of this Court made in C.Murugesan v. Prabakaran and another reported in 2011 Crl.L.J.4570 has been pressed into service, by the petitioner. However, after considering the said decision, and observing that the reported judgment only indicated that the amount deposited, by virtue of the conditional order cannot be allowed to be withdrawn by the complainant, before the disposal of appeal, and further observing that C.Murugesan's case does not

prohibit in toto, the appellate Court from imposing any condition for suspending the sentence, vide the order dated 4th March 2015, the learned Principal Sessions Judge, Tiruvallur, suspended the sentence, imposed in C.C.No.8 of 2014 on the file of learned Judicial Magistrate, Fast Track Court, Magisterial Level, Tiruvallur, on condition that the petitioner shall deposit a sum of Rs.50,000/- within a period of 15 days to the satisfaction of the learned Judicial Magistrate, Fast Track Court, Tiruvallur, to the credit of C.C.No.8 of 2014, and that the petitioner shall execute a bond for a sum of Rs.25,000/- with two sureties for a like sum each to the satisfaction of the learned Judicial Magistrate, Fast Track Court, Magisterial Level, Tiruvallur and the learned Principal Sessions Judge, Tiruvallur has imposed a further condition that the petitioner shall appear before the learned appellate Judge on 20.03.2015.

4. Though Ms.R.Mahalakshmi, learned counsel for the petitioner, assailed the correctness of the order imposed on many grounds, inter alia that the learned Principal Sessions Judge, Tiruvallur, has failed to consider that right of the petitioner convicted of an offence is statutory, and therefore, he cannot be burdened with deposit of the said amount, for suspending the sentence and also placed reliance on the decision made in C.Murugesan's case, this Court is not inclined to countenance the said submissions, for the reason, that in the reported judgment, the accused therein, was sentenced to undergo six months Simple Imprisonment and was also directed to pay compensation of Rs.1,50,000/- within a period of four months from the date of passing of the order by the trial Court. When the conviction and sentence was challenged before the learned Sessions Judge, Kanyakumari, suspension of sentence till the disposal of appeal, was sought for, by filing a miscellaneous petition. While ordering suspension of sentence, the learned Sessions Judge, Kanyakumari, imposed a condition that the petitioner therein, should deposit half of the compensation amount of Rs.75,000/- before the trial Court. The said condition, was challenged by way of a revision. Facts of the case, in the case on hand are different.

5. In the case on hand, while convicting the petitioner under Section 138 of the Negotiable Instruments Act, 1881, the trial Court under Section 357(3) Cr.P.C. has directed the petitioner to pay a sum of Rs.4,50,000/- to the respondent, within thirty days from the date of passing of the judgment.

6. Firstly, in the case on hand, it could be deduced that no portion of the compensation amount ordered to be paid by the petitioner, has been directed by the learned Principal Sessions Judge, Tiruvallur, to be deposited to the credit of C.C.No.8 of 2014, as a condition precedent for suspension of sentence.

7. Secondly, as rightly observed by the learned Principal Sessions Judge, Tiruvallur, the reported judgment, does not prohibit, the appellate Court in toto, from imposing condition for suspension of sentence. Taking note of the intention of Section 138 of the Negotiable Instruments Act, 1881, Court below, has also observed that the appellant would not evince any interest in pursuing

the appeal if he is not imposed with such condition.

8. Right to prefer a statutory appeal, by the person convicted of an offence, should not and cannot be denied, but at the same time, it cannot be contended that the person convicted of offence, can also be set free by enlarging him on bail, without imposing any conditions, which according to Court are reasonable, depending upon the facts and circumstances of the case. It is also to be noted that for filing of an appeal, no condition is imposed. No Court would do so, in the case of conviction. Even in the case on hand, appeal would have been entertained, but on the aspect of suspension of sentence, pending appeal, the learned Principal Judge, Tiruvallur, has imposed the condition.

9. As observed earlier, facts of C.Murugesan's case are inapposite to the case on hand. Condition directing to deposit a sum of Rs.50,000/- to the credit of C.C.No.8 of 2014 on the file of the learned Judicial Magistrate, Fast Track Court, Magisterial Level, Tiruvallur and other conditions, for suspension of sentence, cannot be said to be manifestly illegal, warranting interference. For the reasons stated supra, the Criminal Revision Case is dismissed.

Gms

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.The Principal Sessions Judge, Thiruvallur.
- 2.The Judicial Magistrate, Fast Track Court,
Magisterial level, Tiruvallur.

WEB COPY

Cr1.R.C.No.227 of 2015

ca(co)
pmk.8.4.2015