

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.06.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

Crl.R.C.No.677 of 2016
and Crl.MP.No.4802 of 2016

N.Raju ... Petitioner/Petitioner/
Appellant

Vs.

S.Muthusamy ... Respondent/Respondent/
Respondent

Prayer :- Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the condition imposed in Crl.M.P.No.1211 of 2016 in C.A.No.31 of 2016 dated 04.04.2016 on the file of the Principal District and Sessions Court, Tiurvallur.

For Petitioner : Mr.Pa.Sudesh Kumar

For Respondent : Mr.E.K.Kumaresan

ORDER

The criminal revision petition is directed against the order of condition imposed by the learned Principal District and Sessions Judge, Tiruvallur in Crl.MP.No.1211 of 2016 in CA.No.31 of 2016 dated 04.04.2016.

2.The learned counsel for the petitioner submitted that the complainant/respondent initiated complaint against the petitioner/accused under Section 138 of Negotiable Instruments Act. After trial the accused was found guilty of the offence and convicted, the case was tried by the Fast Track Court Magistrate Level No.II, Poonamallee and the Court found guilty under Section 138 of the Negotiable Instruments Act and sentenced the accused to undergo simple imprisonment for a period of six months and to pay a fine amount of Rs.1,000/-. Aggrieved over the said order the petitioner preferred criminal appeal in Crl.A.No.31 of 2016 on the file of Principal District and Sessions Judge, Tiruvallur.

3. In the said criminal appeal the petitioner filed CrI.MP.No.1211 of 2016 to suspend the sentence made in STC.No.138 of 2013, the learned Principal District and Sessions Judge, suspended the sentence until disposal of the criminal appeal and directed the petitioner to deposit a sum of Rs.80,000/- before the Judicial Magistrate, Fast Track Court, Magistrate level No.II, Poonamallee to the credit of STC.No.138 of 2013 on or before 02.06.2016 and to execute a bond for a sum of Rs.25,000/- with two sureties for a like sum each to the satisfaction of the Judicial Magistrate Fast Track Court, Magisterial level No.II, Poonamallee and directed the petitioner to appear before the Court on 03.06.2016. Aggrieved over the said condition imposed on the petitioner, the petitioner filed the present revision before this Court.

4. The learned counsel for the petitioner would mainly contend that the trial Court has not awarded any compensation to the complainant. The lower trial Court failed to consider that the accused availed hand loan of Rs.10,00,000/- from the complainant, without any basis, the trial Court simply convicted the accused for mere filing of the case, the lower appellate Court also imposed condition on the accused to deposit a sum of Rs.80,000/- to the credit of STC.No.138 of 2012 and to execute a bond for Rs.25,000/- with two sureties each. Since, the condition imposed by the lower appellate court is erroneous, the civil revision petition has to be allowed.

5. Per contra, the learned counsel for the respondent submitted that, there is no specific order to say that it is a compensation to the present complainant. The lower appellate Court has only imposed condition to deposit a sum of Rs.80,000/- to the credit of STC.No.138 of 2013. Hence, there is no illegality or infirmity in the order passed by the lower appellate Court and the revision is liable to be dismissed.

6. At the time of passing orders in the petition filed by the petitioner to suspend the sentence imposed on him, the learned appellate Court imposed condition to deposit a sum of Rs.80,000/- to the credit of Judicial Magistrate Fast Track Court, Magisterial level No.II, Poonamallee. On perusal of the said order it is not mentioned as compensation or damage or there is no direction to the petitioner to pay the amount to the present complainant. The Court has every power to impose condition on the petitioner at the time of suspension of sentence.

7. The learned counsel for the petitioner contended that the lower appellate Court cannot impose any condition to deposit a sum of Rs.80,000/- to the credit of STC.No.138 of 2013, the said condition is imposed without any provisions of law and the order of the lower appellate Court is liable to be set aside.

8. In the above said circumstances, it is useful to extract Section 389 Cr.PC which reads as follows :-

"389. Suspension of sentence pending the appeal; release of appellant on bail :- (1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to

be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

(2) The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by convicted person to a Court subordinate thereto.

(3) Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,-

(i) where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years, or

(ii) where the offence of which such person has been convicted is a bailable one, and he is on bail, order that the convicted person be released on bail unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1), and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.

(4) When the appellant is ultimately sentenced to imprisonment for a term or to imprisonment for life, the time during which he is so released shall be excluded in computing the term for which he is so sentenced."

9. In view of the above provision of Section 389 of Cr.P.C., where the convicted person satisfies the Court by which he is convicted, if he intends to present an appeal and if he is on bail, is sentenced to imprisonment for a term not exceeding three years.

10. In this case, the sentence awarded to the present petitioner is less than three years and it is not disputed that the petitioner is not in custody during the time of trial. In view of the above facts and circumstances of the case, this Court is inclined to set aside the condition imposed by the learned Principal District and Sessions Judge, Tiruvallur, viz., directing the petitioner/accused to deposit a sum of Rs.80,000/- to the credit of STC No.138 of 2013.

11.In the result, the Criminal Revision Case is partly allowed and the order passed by the learned Principal District and Sessions Judge, Tiruvallur, directing the petitioner to deposit a sum of Rs.80,000/- before the learned Judicial Magistrate, Fast Track Court, Magistrate Level No.II, Poonamallee, to the credit of STC No.138 of 2013 is set aside. Further, the petitioner is directed to appear before the concerned Court on the first working day of every English Calender month until further orders or till the disposal of criminal appeal. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

tsh

To

- 1.The Principal District and Sessions Court,
Tiruvallur
2. The Judicial Magistrate Fast Track Court,
Magisterial level No.II, Poonamallee.
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section,
High Court, Madras.

+ 1cc to Mr.E.K. Kumaresan, Advocate Sr.34906

Cr1.R.C.No.677 of 2016
and

Cr1.M.P.No.4802 of 2016

PVS (CO)
Eu 22.7.16

WEB COPY