

In the High Court of Judicature at Madras

Dated: 26.04.2016

Coram

The Honourable Mr. Justice M.VENUGOPAL

Crl.Rc.No.690 of 2016

and

C.M.P.No.4917 of 2016

N.Raju

....Petitioner

..vs..

V.N.Krishnasamy

... Respondent

Prayer: This Criminal Revision Petition is filed under Sections 397 and 401 of Cr.P.C., against the order passed by the learned Principal and Sessions Judge, Tiruvallur in Crl.M.P.No.1212 of 2016 in C.A.No.32 of 2016 dated 04.04.2016.

For Petitioner : Mr.Pa.Sudesh Kumar

O R D E R

The Petitioner/Appellant has filed the instant Criminal Revision Petition before this Court as against the order dated 04.04.2016 in Crl.M.P.No.1212 of 2016 in C.A.No.32 of 2016 passed by the Learned Principal District and Sessions Judge, Tiruvallur.

2.The Learned Principal and Sessions Judge, Tiruvallur while passing the impugned order in Crl.M.P.No.1212 of 2016 in C.A.No.32 of 2016 on 04.04.2016 had observed the following:

"This petition filed u/s.389(1) of Cr.P.C., to suspend the sentence passed by the Judicial Magistrate, Fast Track Court, Magisterial Level No.II, Poonamallee in S.T.C.No.100 of 2013 dated 15.02.2014.

The Petitioner herein has been convicted and sentenced to undergo S.I. for six months and to pay a fine of Rs.1000/- in default to undergo S.I. one month for the commission of offence under Section 138 of N.I. Act.

The sentence was suspended by the Judicial Magistrate, Fast Track Court, Magisterial Level No.II, Poonamallee till 15.03.2016. Fine of Rs.1000/- paid and original fine receipt is enclosed.

Under the above facts and circumstances, this Court is inclined to suspend the sentence pending disposal of the criminal appeal 32/2016.

Therefore, the sentence is suspended until the disposal of Criminal Appeal No.32 of 2016 on deposit of Rs.80,000/- before the learned Judicial Magistrate, Fast Track Court, Magisterial Level No.II, Poonamallee to the credit of STC.No.100/2013 on or before 02.06.2016 and on his executing a bond for a sum of Rs.25,000/- with two sureties for a likesum each to the satisfaction of the Judicial Magistrate, Fast Track Court, Magisterial Level No.II, Poonamallee and the Petitioner shall appear before this Court on 03.06.2016."

3.The Revision Petitioner/Appellant being dissatisfied with the impugned order dated 04.04.2016 in CrI.M.P.No.1212 of 2016 in C.A.No.32 of 2016 passed by the Appellate Court, has filed the present Criminal Revision Petition by taking a pivot plea that the Appellate Court had committed an error in imposing an onerous condition of deposit of Rs.80,000/- to be made by the Revision Petitioner/Accused and in fact, the impugned order was passed without delving deep into the merits of the matter which is placed on record.

4.The Learned counsel for the Petitioner takes a core stand that the Appellate Court had wrongly directed the Petitioner/Appellant to deposit a sum of Rs.80,000/- before the

trial Court on or before 02.06.2016 and the same is unknown to criminal jurisprudence.

5.The Learned counsel for the Petitioner/Appellant brings it to the notice of this Court that admittedly, no compensation amount was ordered by the trial Court and instead, only a fine amount of Rs.1000/- was imposed and quite contra to that, the Appellate Court in CrI.M.P.No.1212 of 2016 in C.A.No.32 of 2016 had imposed a stressful and onerous condition, directing the Petitioner/Appellant to deposit a sum of Rs.80,000/- before the trial Court on or before 02.06.2016 which is per se not correct in the eye of Law.

6.It is to be borne in mind that as per Section 389 Cr.P.C., that an Appellate Court can exercise the power conferred under Sub Section (1). Before the Court orders suspension of sentence, an appeal must have been properly filed in the eye of Law. Section 389 Cr.P.C., enjoins with suspension of execution of sentence pending appeal, can be granted by a concerned Court and the said Court can order the release of appellant on bail. No wonder, there is a distinction between 'Bail and Suspension of Sentence'. One of the salient features of Section 389 Cr.P.C., is the requirement of an Appellate Court to record reasons in writing while dealing with an Application/Petition and ordering the suspension of execution of sentence. The very fact reasons are to be assigned in writing by a concerned Court clearly envisages that a Court of Law is to be more careful, circumspect and act with meticulous care and caution by taking note of the entire conspectus of the attendant facts and circumstances of the case in an integral manner. It cannot be gainsaid that an Appellate Court is duty bound to objectively and dispassionately assess the matter and to assign reasons for arriving at a conclusion that the case in question warrants suspension of execution of sentence and grant of bail. Section 389 Cr.P.C., is to be read along with Section 387 thereof.

7.Be that as it may, as far as the present case is concerned, this Court has perused the contents of the order dated 04.04.2016 in CrI.M.P.No.1212 of 2016 in C.A.No.32 of 2016 passed by the Appellate Court. A mere running of the eye over the contents of the impugned order in CrI.M.P.No.1212 of 2016 in C.A.No.32 of 2016 passed by the Appellate Court at para 3 to the effect that "therefore the sentence is suspended until the disposal of Criminal Appeal No.32 of 2016 on deposit of Rs.80,000/- before the learned Judicial Magistrate, Fast Track Court, Magisterial Level No.II, Poonamallee to the credit of STC.No.100/2013 on or before 02.06.2016 etc.,", in the considered opinion of this Court appears to be an irrational,

illogical and burdensome one, considering the nature of the present facts and circumstances of the case which float on the surface.

8. In fact, the Appellate Court had not assigned reasons for directing the Petitioner/Appellant to deposit a sum of Rs.80,000/- before the trial Court to the credit of S.T.C.No.100 of 2013 on or before 02.06.2016 at the time of passing the impugned order in Crl.M.P.No.1212 of 2016 in C.A.No.32 of 2016 dated 04.04.2016.

9. Needless for this Court to make a significant mention that assigning reasons by a Court of Law in regard to the order passed are the heart and soul of a given case. Since no reasons were assigned by the Appellate Court at the time of grant of suspension of sentence in Crl.M.P.No.1212 of 2016 in C.A.No.32 of 2016 dated 04.04.2016 and also that when a direction being issued to the Petitioner to deposit a sum of Rs.80,000/- on or before 02.06.2016 to the credit of S.T.C.No.100 of 2013 on the file of the trial Court, this Court finds that the impugned order in this regard is a non speaking one. In reality, the said order is bereft of qualitative and quantitative reasonings and suffice it for this Court to point out that it is cryptic. In fact, there is no outline of process of reasoning as to how the Appellate Court had arrived at a sum of Rs.80,000/- before directing the Petitioner/Appellant to deposit the said sum on or before 02.06.2016. Therefore, this Court unhesitatingly comes to a consequent conclusion that the impugned order dated 04.04.2016 suffers from legal infirmity and on this score alone to prevent an aberration of justice and to promote a substantial cause of justice, this Court interferes with the order passed in Crl.M.P.No.1212 of 2016 in C.A.No.32 of 2016 and sets aside the same. Consequently, the Criminal Revision Petition succeeds.

10. In the result, the Criminal Revision Petition is allowed for the reasons assigned in this Criminal Revision. The Learned Principal District and Sessions Judge, Tiruvallur is hereby directed to restore Crl.M.P.No.1212 of 2016 to his file and to pass fresh orders in Crl.M.P.No.1212 of 2016 bearing in mind the ingredients of Section 389 Cr.P.C., and also, to pass a reasoned speaking order with qualitative and quantitative details that too in a dispassionate manner, uninfluenced and untrammelled with any of the observations made by this Court in this Criminal Revision Petition, within a period of two weeks from the date of receipt of a copy of this order. It is open to the Petitioner to air his grievance before the Appellate Court and the Appellate Court is directed to provide adequate opportunities to the Petitioner/Appellant in the manner known to Law and in accordance with Law (ofcourse after adhering to the Principles

of Natural Justice). Consequently, connected Miscellaneous
Petition is closed.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

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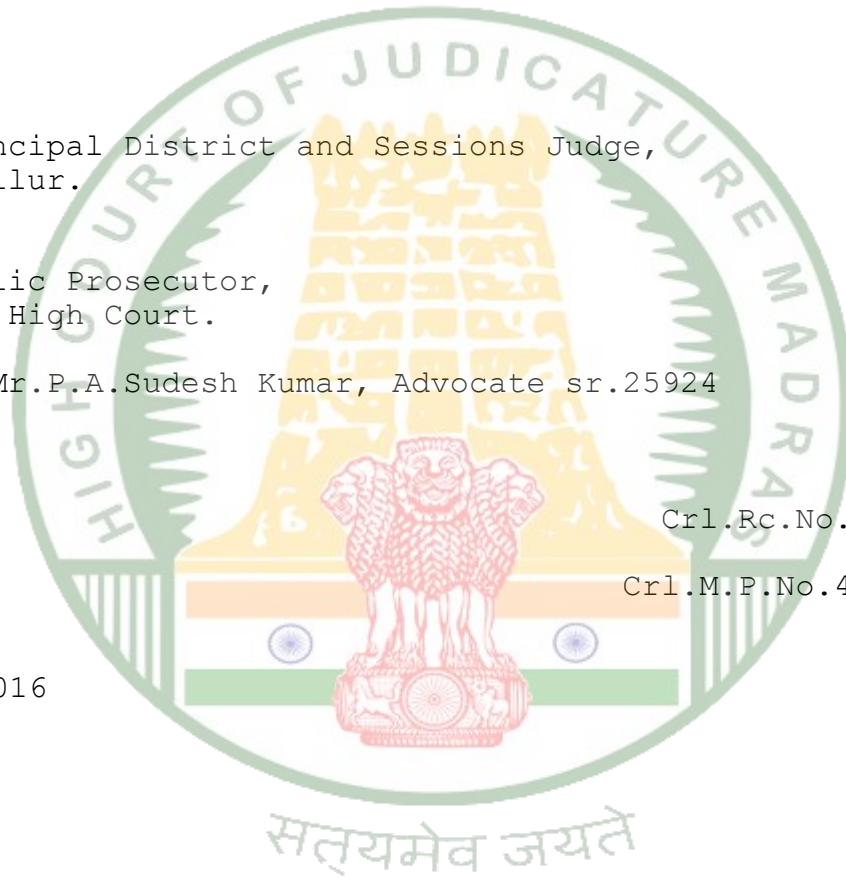
1.The Principal District and Sessions Judge,
Tiruvallur.

2.The Public Prosecutor,
Madras High Court.

+1 cc to Mr.P.A.Sudesh Kumar, Advocate sr.25924

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and
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