

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.06.2016

Coram

THE HONOURABLE MR. JUSTICE G.CHOCKALINGAM

CrI.R.C.No.699 of 2016
and CrI.MP.No.5004 of 2016

K.M.Sivakumar ... Petitioner/Appellant

Vs.

Nandeewaran. ... Respondent/Respondent

Prayer :-Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C. to set aside the order dated 05.04.2016 made in CrI.MP.No.987 of 2016 in CA.No.38 of 2016 on the file of learned Principal District and Sessions Court, Coimbatore.

For Petitioners : Mr.R.Prabakar

For Respondent : Mr.R.Selvaraj

ORDER

The criminal revision petition is directed against the order passed by the learned Principal District and Sessions Court, Coimbatore in CrI.MP.No.987 of 2016 in CA.No.38 of 2016 dated 05.04.2016.

2.Heard the rival submissions made on both sides.

3.The respondent is the complainant, who filed complaint under Section 138 of Negotiable Instruments Act, before the Judicial Magistrate, Fast Track Court, Magisterial level - II, Coimbatore in CC.No.84 of 2013 dated 02.03.2016, the trial Court found guilty that the first respondent is concern and the second respondent is sole proprietor convicted and sentenced him to undergo simple imprisonment for 10 month as per Section 255 (2) Cr.PC. The petitioner/accused filed criminal appeal against the said order in CA.No.38 of 2016 along with CrI.MP.No.987 of 2016 under Section 389 (1) Cr.PC for suspension of sentence, before the Principal District and Sessions Court, Coimbatore. The lower appellate Court dismissed the petition for suspension of sentence, on the ground that the petitioner has not appeared before the trial Court on the date of pronouncement of orders

and hence the trial Court issued NBW against the petitioner. The petitioner is facing trial for the offence under Section 138 of Negotiable Instruments Act, it is for the petitioner/accused to appear before the Magistrate Court at the time of pronouncing judgment, without obeying the order passed by the Court below, the petitioner straight away approached the lower appellate Court for suspension of sentence. Aggrieved over the said order of the lower appellate Court, the petitioner/accused is before this Court.

4.The learned counsel for the petitioner submitted that NBW was pending against the present revision petitioner and the petitioner is entitle to file petition for suspension of sentence is maintainable.

5.The learned counsel for the respondent submitted that the order passed under Section 389(1) Cr.PC, against the said order no revision petition is maintainable and seeks to dismiss the revision petition.

6.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."

7.From the reading of the above section, the petitioner has to approach the court by way of criminal appeal before the lower appellate Court, for Suspension of sentence in pending appeal. The petitioner/accused approached this Court by way of revision is not maintainable and the revision petition is liable to be dismissed and the same is hereby dismissed.

8.In the result, the criminal revision petition stands dismissed, with liberty given to the petitioner to approach the learned Principal District and Sessions Court, Coimbatore, by filing fresh petition in accordance with law. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate, Fast Track Court,
Magisterial level - II, Coimbatore.
2. -Do- Thro' The Chief Judicial Magistrate,
Coimbatore.
3. The Principal District and Sessions Judge,
Coimbatore.
4. The III Additional District and Sessions Judge,
Coimbatore.

+1cc to Mr.R.Prabakar, Advocate sr.34062
+1cc to Mr.V.Vijayakumar, AdvocateSr.34619

Cr1.R.C.No.699 of 2016

GJ[co]
srg 11/07/2016