

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE G.CHOCKALINGAM

Crl.R.C.No.827 of 2016

B.Senthilkumar

... Petitioner/Accused

Vs.

A.G.Venugopal

... Respondent/Complainant

Prayer: Criminal Revision Case filed under Section 397 r/w. 401 of the Code of Criminal Procedure, to set aside the order dated 02.06.2016 made in C.M.P.No.1278 of 2016 in C.A.No.66 of 2016 on the file of the Principal District and Sessions Judge, Coimbatore.

For Petitioner : Mr.M.N.Balakrishnan
For Respondent : Mrs.R.S.Siva Priya

ORDER

This Criminal Revision Case is directed against the order dated 02.06.2016 made in C.M.P.No.1278 of 2016 in C.A.No.66 of 2016 on the file of the learned Principal District and Sessions Judge, Coimbatore.

2. In this case, the respondent herein has given a complaint against the revision petitioner for the offence under Section 138 of the Negotiable Instruments Act and the same was taken on file as S.T.C.No.1844 of 2012 and after trial, the learned Judicial Magistrate No.II, Pollachi, sentenced the accused to undergo simple imprisonment for one year and directed the accused to pay a sum of Rs.5,00,000/- as compensation within three months and in default, to undergo simple imprisonment for six months by the judgment dated 10.05.2016. Since the petitioner was not present on the date of judgment, the trial Court issued NBW against the accused.

3. Aggrieved by the order of the learned Judicial Magistrate No.II, Pollachi, the accused had preferred criminal appeal before the learned Principal District and Sessions Judge, Coimbatore, and the appeal was taken on file as

Crl.A.No.66 of 2016 and along with the appeal, the revision petitioner/accused filed a petition for suspension of sentence in C.M.P.No.1278 of 2016 before the learned Principal District and Sessions Judge, Coimbatore. The learned Sessions Judge, after admitting the criminal appeal, directed to issue notice to the respondent and dismissed the suspension petition on 02.06.2016 for the reason that the petitioner straightaway came to the Sessions Court and filed a petition for suspension of sentence without filing a petition for recall of NBW. Against which, the present revision is preferred by the revision petitioner/accused.

4. In this case, admittedly, on the date of judgment, the present revision petitioner/accused was not present before the Court. Hence, NBW was issued by the trial Court. Even though the revision petitioner/accused preferred criminal appeal before the District Court, he has not surrendered in the trial Court or in the First Appellate Court to seek for suspension of sentence already awarded by the trial Court.

5. The learned counsel for the petitioner would mainly contend that the First Appellate Court, without application of mind, erroneously dismissed the application. It is further contended that the First Appellate Court has failed to consider the possibility of the accused to succeed in the appeal and also failed to consider the fact that the present revision petitioner has permanent resident at Jalakandapuram, Mettur Taluk and also he is suffering from severe back pain at the time of pronouncement judgment. Hence, the order of the First Appellate Court has to be set aside and the criminal revision case has to be allowed.

6. In this case, admittedly, when NBW was issued by the trial Court, the present application is filed by the revision petitioner, without surrendering before the trial Court or before the First Appellate Court. Hence, the trial Court clearly came to a conclusion that when NBW was issued by the competent Court and without surrendering before the trial Court, the suspension petition filed by the petitioner is not maintainable and the Court below dismissed the same. Hence, this Court is of the considered view that there is no infirmity or illegality in the order passed by the trial Court and hence, the same is liable to be set aside.

7. In the result, the criminal revision case is dismissed with liberty to the petitioner to file a suspension petition before the First Appellate Court. If the petitioner surrenders

before the First Appellate Court and files a petition for suspension of sentence, the First Appellate Court is directed to consider the same and pass orders on the same day itself, according to law.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1. The Principal District and Sessions Judge,
Coimbatore.

2.The Judicial Magistrate,
No.II Pollachi

+1cc to Mr.M.N.Balakrishnan, Advocate, S.R.No.55169

(CO) KGK
CP(20/10/2016)

Cr1.R.C.No.827 of 2016

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