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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Ninth day of August Two Thousand Sixteen
PRESENT

The Hon`ble Dr.Justice P.DEVADASS

CRL MP(MD) No.366 of 2016

IN

CRL A(MD) No.12 of 2016

G.SULTHAN SHA

... PETITIONER/APPELLANT/ACCUSED

Vs

THE IV ADDITIONAL DISTRICT JUDGE,
MADURAI.

... RESPONDENT/RESPONDENT/COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence of fine of Rs.200/- imposed on the accused to be paid by him 04.01.2016 in the court before 5.30 pm 04.01.2016 failing which the accused shall undergo Simple Imprisonment for a period of one month M.C. No.1 of 2015 by the IV Additional District Judge, Madurai dated 04.01.2016.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S M.SURI, Advocate for the petitioner and of MR.N.THAMILMANI, Advocate for the respondent, the court made the following order:-

In this petition, the appellant, who has been convicted under Section 228 I.P.C., and sentenced to pay a fine of Rs.200/- with default sentence, seeks suspension of sentence of fine under Section 389(1) r/w 351(2) Cr.P.C.

2. It is a rare case. But, it is a case. The petitioner has been convicted and sentenced as stated above. His criminal appeal has been admitted. Pending consideration of his criminal appeal, he seeks suspension of sentence of fine.

3. In a suspension of sentence petition itself, the entire appeal should not be argued. Then, what has to be argued. The appellant shall satisfy the Court that his appeal presents / involves certain eminently arguable points. It can also be called as a *prima facie* case. At this stage, weight or acceptability or sustainability of those points should not be considered, otherwise it will result in prejudging the appeal itself.

4. The petitioner has been accused of having interfered with the course of justice. He is stated to have exhibited a contumacious conduct right before the Presiding Officer of a Court. The Court frowned upon him and slapped on him the fiscal sentence. It is an appealable judgment. It is his fundamental right to appeal as against his conviction (See Article 21 Constitution of India and **Menaka Gandhi Vs. Union of India [1978 AIR 597]**).

<https://hcservices.ecourts.gov.in/hcservices/>

5. It has been contended by the learned counsel for the petitioner that in recording conviction, consequently in imposing the sentence, the



Trial Court has not adhered to the statutory provisions adumbrated in the Code of Criminal Procedure.

6. The learned counsel for the petitioner also stressed that the initiation of such proceedings must be in accordance with law, in other words, taking cognizance must be as prescribed under the Code. However, in the present case, the cognizance taken is flawed. According to the learned counsel, the cognizance should have been taken in the course of the judicial proceedings, on the spot. But, in this case, it is a deferred cognizance. It strikes at the very root of the matter. It will consign the whole proceedings to coffin.

7. The learned counsel for the respondent would contend that the petitioner is factually incorrect. Apart from that, the factual matrix is such that he does not deserve for any indulgence under Section 389(1) Cr.P.C.

8. I have anxiously considered the rival submissions, perused the impugned Judgment and also the materials on record.

9. This appeal presents certain eminently arguable points. They require deep examination in the criminal appeal. It can't be over in a minute. It will take sometime. The petitioner will not abscond or flee away from justice. In the facts and circumstances, I find *prima facie* case in his favour.

10. In view of the above, the sentence of fine alone imposed on the petitioner by the learned IV Additional District Judge, Madurai, in M.C.No.1 of 2015, is suspended.

11. Accordingly, this petition is disposed of.

sd/-
09/08/2016

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

THE IV ADDITIONAL DISTRICT JUDGE, MADURAI.

+1. C.C. to M/S M.SURI Advocate SR.No.43174

+1cc to M/S.N.TAMILMANI, Advocate in SR.No.43058

ORDER
IN
CRL MP(MD) No.366 of 2016
IN
CRL A(MD) No.12 of 2016
Date :09/08/2016