



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2016

CORAM:

THE HONOURABLE DR.JUSTICE P.DEVADASS

C.R.L.RC(MD) No.431 of 2015

Venkatesh

... Petitioner

-VS-

V.Balakrishnan

... Respondent

PRAYER: Criminal Revision Petition is filed, under Section 397 r/w 401 Cr.P.C., to call for the records and set aside the order dated 04.08.2015 made in CrI.M.P.No.763 of 2015 in C.A.No.55 of 2014 on the file of the Hon'ble Principal Sessions Judge, Karur.

For Petitioner: Mr.N.Shanmugaselvam

For Respondent: Mr.V.Perumal

O R D E R

The legality, propriety and regularity of the impugned order in CrI.M.P.No.763 of 2015 in C.A.No.55 of 2014 passed on 04.08.2015 by the learned Principal Sessions Judge, Karur, has been canvassed in this revision.

2. I have heard the learned counsel for the revision petitioner / accused and the learned counsel for the respondent / complainant.

3. In a cheque bouncing case in C.C.No.541 of 2013, the revision petitioner has been convicted and sentenced to a term of imprisonment by the learned Judicial Magistrate, Fast Track Court, Karur. On the date of Judgment, since the accused was not present, the learned Magistrate issued NBW, an order to arrest and send him to serve the sentence. In these circumstances, the revision petitioner filed C.A.No.55 of 2014 appealing, as against the Judgment of the trial Court.

4. In the appellate Court he sought for suspension of sentence.

5. The learned Principal Sessions Judge, Karur, passed the following orders.

"The learned counsel for the petitioner submitted that the petitioner has been convicted by the learned Judicial Magistrate (FTC), Karur on 29.10.2014 in C.C.No.541 of 2013 and the petitioner was sentenced to undergo simple



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imprisonment for five months for the offence under Section 138 and 142 of N.I.Act. According to him, in the absence of the accused, the judgment and order of sentence was passed by the trial Court and immediately, the trial Court issued NBW to secure the petitioner to undergo the period of sentence. He therefore prayed for suspension of the sentence passed by the trial Court till the disposal of the criminal appeal.

The respondent has raised objection for the petition and contended that it is for the petitioner to move the trial Court to get the appropriate relief on surrender of the accused and that this petition is not maintainable before this Court.

Considering the facts and circumstances of the case, this Court directs the petitioner to surrender before the trial Court, that on such surrender, the trial Court is directed to dispose of the application filed under Section 70(2) Cr.P.C., and in accordance with law. With the above direction this petition is disposed of."

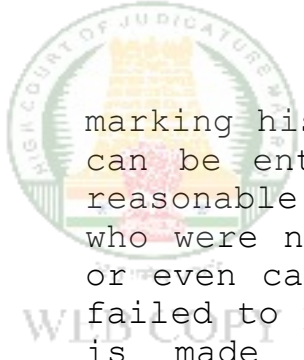
6. Actually, by the impugned order, the appellate Court / Principal Sessions Judge, Karur, created complication, confusion. The impugned order exhibits lack of practical application of mind. It is also as against current trend of law.

7. When the trial Court convicts and sentences a person, if the sentence is below three years, the trial Court got powers to give interim relief by suspending the sentence enabling the convicted person to move the appellate court to get appeal bail.

8. Under Section 389(1) Cr.P.C., the appellate Court has got the power to suspend the sentence by granting bail. It is known as appeal bail. Such bail under Section 389(1) Cr.P.C. is also called post-Judgment bail. The principles governing grant of bail prior to pronouncement of judgment and after pronouncement of judgment differ. Under Section 389(1) Cr.P.C., the Court has to find out a prima facie cases. It must consider by referring to the grounds of appeal and the relevant materials that some arguable points are involved in the appeal, which requires to be considered in the main bail. In such circumstances, for reasons to be recorded in writing, the court can suspend the sentence by granting bail. The said order is called appeal bail. By a comparison of Section 397(1) and 401 of Cr.P.C., also enables the revision court to grant bail. It is called revision bail.

9. While exercising the said power of bail, the appellate court and the revisional courts act is on the very same principles.

10. Earlier, there used to be insisting upon the presence of the accused as a condition precedent to recall the N.B.W. Latter, this view has been changed. If a person exhibits his willingness to participate in the proceedings even without surrendering or



marking his physical presence inside the court, a recall petition can be entertained. The Court has got power to impose certain reasonable conditions. This has also been extended to persons, who were not present on the date when the judgment was pronounced or even cases where the persons who has been asked to present but failed to present for fear of punishment. If a prima facie case is made out falling under Section 389(1) Cr.P.C., without insisting upon their physical presence before the Court, the Court can exercise its power under Section 389(1) Cr.P.C., so also under Section 397(1) Cr.P.C., and grant them bail, appeal bail or revision bail, as the case may be.

11. See **Chelladurai and another V.s Inspector of Police, All Women Police Station, Nagercoil, Kanyakumari District (2006 (2) MWN (Cr) 403)**, and **Karnati Nagaiah Vs. Angelo Kanikkariaj in Crl.O.P.(MD)No.2897 of 2015, dated 07.04.2015**, an unreported Judgment of this Court. Thus, the impugned order must go and the matter must go before the appellate Judge.

12. In the result, the revision is allowed. The impugned order passed by the learned Principal Sessions Judge, Karur in Crl.M.P.No.763 of 2015 in C.A.No.55 of 2014, is set aside. The learned Principal Sessions Judge shall hear the appeal bail petition and pass orders, according to law. In passing the order, the learned appellate Judge will take note of the decision of this Court in reported in **(2006 (2) MWN (Cr) 403)**.

Sd/-

Assistant Registrar(CS-I)

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Sub Assistant Registrar

To

- 1.The Principal Sessions Judge, Karur.
- 2.The Judicial Magistrate, Fast Track Court, Karur.
- 3.The Government Advocate (crl.side),
Madurai Bench of Madras High Court, Madurai.

+1cc to M/S.N.Shanmuga selvam,Advocate, SR NO: 29961

mpk

JA-NGM-MP-28.06.2016/3P-5C

C.R.L.RC(MD) No.431 of 2015
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