



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.08.2016

CORAM:

THE HONOURABLE DR. JUSTICE S.VIMALA

Crl.O.P. (MD) .No.14400 of 2016

Velusamy

.. Petitioner

Vs.

1. Shanmugam

2. The Public Prosecutor,
Dindigul District.

.. Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to set aside the impugned return order dated 16.06.2016 in the suspension of sentence application in pending Crl.M.P.No.1373 of 2016 in unnumbered Criminal Appeal on the file of the learned Principal District and Sessions Judge, Dindigul and direct the learned Principal District and Sessions Judge, Dindigul to number it and to dispose of the same within a stipulated period.

For Petitioner

: Mr.I.Sam Jegan

For 2nd respondent

: Mr.A.P.Balasubramani,
Government Advocate
(Criminal side)

ORDER

An issue regarding maintainability of petition seeking suspension of sentence has been raised without application of mind. The order returning the petition raising the issue of maintainability is under challenge in this case.

2. The petitioner has been convicted under Section 138 of the Negotiable Instruments Act and sentenced to undergo six months simple imprisonment and also ordered to fine amount of Rs.2,000/- in S.T.C.No.423 of 2015 by the learned District Munsif cum Judicial Magistrate, Kodaikanal. Challenging this judgment, the petitioner herein filed an appeal before the learned Principal District and Sessions Judge, Dindigul. Pending criminal appeal, he filed a petition for suspension of sentence. But, the same has been returned by the learned Sessions Judge on 16.06.2016 with the following endorsement:

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

"As per the order of the High Court in Crl.O.P.(MD). No.28838 of 2011 dated 28.02.2012, it is not at all



possible for the appellate Court to suspend the sentence beyond 30 days u/s.389(1) Cr.P.C.”

3. The judgment in Crl.O.P.No.(MD).No.28838 of 2011 (P.Ramakrishnan vs. Tmt. Rani Rambai) decided on 16.06.2016 has been perused. That was the case where petition was filed seeking a direction to the Judicial Magistrate to extend the period of suspension of sentence by two weeks, beyond the period of 30 days, which was already granted. Quoting the provisions of Section 389 (3), it was pointed out that the Trial Court has got power to suspend the sentence for a maximum period (30 days) within which an appeal has to be filed by the convict as per the provisions of Limitation Act. Thus, it was held that the learned Magistrate lacks jurisdiction to grant suspension beyond 30 days from the date of imposition of sentence. So far as this case is concerned, suspension of sentence is filed before the Appellate Court in which the appeal is pending consideration. At no stretch of imagination, it can be said that the application for suspension of sentence is not maintainable before the appellate Court itself.

3.1. Section 389(1) Cr.P.C. reads as under:

“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.”

4.The relevant observation made in the above order at paragraph No.8 is reproduced hereunder for the convenient reference of the learned Sessions Judge, Dindigul.

“It is too elementary to say that suspension of sentence under Section 389(1) Cr.P.C. can be made only during the pendency of the appeal. When the appeal memorandum itself has not been represented and the same is in the hands of the petitioner, it is not at all possible for the appellate Court to suspend the sentence and it is not equally possible for the trial Court to extend the period of suspension of sentence beyond 30 days.”

5. The mere reading of the provisions of Section 389(1) would have made it clear to the Sessions Court, obviously the return made by the Court is unjustifiable. Under such circumstances, the District and Sessions Judge, Dindigul is directed to take application for suspension of sentence on file and to pass orders on merits and in accordance with law.



6.This Criminal Original Petition is accordingly disposed of.

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/True Copy/

Sd/-

Assistant Registrar (CSII)

Sub-Assistant Registrar

To

1.The Principal District and Sessions Judge, Dindigul.

2.The Public Prosecutor,
Dindigul District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Section Officer,
V.R.Section,
Madurai Bench of Madras High Court, Madurai.

+One cc to Mr.I.Sam Jegan, Advocate, SR.no.43882

gcg

RL/6C/3P/GSV/PM/SARIII/12/8/2016

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