

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Crl.O.P.No.5262 of 2017

Janakiraman

... Petitioner

Vs.

V.U.Sudeesh

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.A.No.24 of 2017 on the file of the Principal District and Sessions Court, Coimbatore and to set aside the order dated 06.02.2017 passed in Crl.M.P.No.323 of 2017 filed under section 389(1) of Cr.P.C and consequently, cancel the NBW issued by the learned Judicial Magistrate (FTC-1) @ Magisterial level, Coimbatore in C.C.No.266 of 2011 against the petitioner and to direct the learned Principal District and Sessions Judge, Coimbatore to suspend the sentence pending disposal of C.A.No.24 of 2017.

For Petitioner : Mr.A.M.Rahamath Ali

For Respondent : No Appearance

ORDER

Heard the learned counsel for the petitioner.

2.The case of the petitioner is that the petitioner was convicted for an offence under Section 138 of Negotiable Instruments Act, 1973 and sentenced to undergo simple imprisonment for a period of 6 months and also to pay a compensation of Rs.4 lakhs within two months from the date of the said judgment, in default to undergo two months simple imprisonment by the learned Judicial Magistrate (FTC No.I), @ Magisterial Level, Coimbatore in C.C.No.266 of 2011 dated 06.01.2017. On the date of pronouncement of the judgment, the petitioner was absent and hence, Non Bailable Warrant was issued against him. Challenging the same, the petitioner has filed an appeal in C.A.No.24 of 2017 before the learned Principal District and Sessions Judge, Coimbatore in which he has sought for suspension of sentence in Crl.M.P.No.333 of 2017 but the same was dismissed by the learned Judge on 06.02.2017 on the ground that if this petition is allowed,

then all the accused persons would be absenting themselves at the time of pronouncement of the judgment. Aggrieved over the said order, the present petition has been filed.

3.The learned counsel for the petitioner submitted that in an identical circumstance, the Hon'ble Supreme Court in Suresh Kumar and others Vs. State (NCT of Delhi) reported in CDJ 2000 SC 1060 has held that when a convicted person is sentenced to a fixed period of sentence and when he files an appeal under any statutory right, suspension of sentence shall be considered liberally by the trial Court unless there are exceptional circumstances. He further submitted that in view of the rulings of the Hon'ble Supreme Court as stated supra, the case of the petitioner can also be considered liberally.

4.Considering the submission made by the learned counsel for the petitioner and in the light of the judgment of the Hon'ble Supreme Court cited supra, the order dated 06.02.2017 passed in CrI.M.P.No.333 of 2017 by the learned Principal District and Sessions Judge, Coimbatore is set aside and consequently, Non Bailable Warrant issued by the learned Judicial Magistrate (FTC No.I), at Magisterial Level, Coimbatore in C.C.No.266 of 2011 on 06.01.2017 pending on the file of the learned Principal District and Sessions Judge, Coimbatore, is suspended till the disposal of the appeal.

5.In the result, the Criminal Original Petition stands allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Principal District and Sessions Court,
Coimbatore.
2. The Judicial Magistrate (FTC No.I)
@ Magisterial Level, Coimbatore.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.H.Rajasekar, Advocate, S.R.No.52636

CrI.O.P.No.5262 of 2017
and CrI.M.P.No.3919 of 2017

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