

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.07.2017

CORAM:

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

Crl.R.C.No.804 OF 2017

S.Shankar : Petitioner

versus

1.State rep. by
Public Prosecutor,
Coimbatore.

2.Manishankar : respondents

Revision filed against the order made in C.M.P.No.1335 of 2017 in C.A.No.121 of 2017 by the Principal District Sessions Judge, Coimbatore.

For petitioner : Mr.C.D.Sugumar

For 1st respondent : Mr.R.Sekar, Government Advocate (Crl.Side)

For 2nd respondent : No appearance

ORDER

Pursuant to the order of this Court to serve the second respondent privately, steps have been taken by the petitioner and he has also produced proof for such service. Hence, by order dated 13.3.2017, this Court directed the Registry to print the name of the second respondent in the cause list.

2. Today, when the matter is taken up for hearing, none appears for the second respondent.

3. I have heard the learned counsel for the petitioner as well as learned

Government Advocate (Crl.Side) appearing for the first respondent.

4. This revision case is filed against the order passed by the Principal District and Sessions Judge, Coimbatore, in C.M.P.No No.1335 of 2017 in C.A.No.121 of 2017 dated 9.6.2017. In the said petition, it was prayed to suspend the substantive sentence of the Trial Court. The said petition was filed along with the main appeal, filed before the First Appellate Court. The petition was dismissed on the ground that on the date of pronouncement of the judgment by the Trial Court, the petitioner was not present, and therefore, the learned Trial Judge pronounced the judgment and issued non bailable warrant. In that context, the learned First Appellate Judge has rejected the present petition for the reason that since it is arising out of Section 138 Negotiable Instruments Act, the petitioner could have appeared on the date of pronouncement of the judgment. Therefore, the learned First Appellate Judge observed that if this kind of petition is allowed, then all the accused persons would take a stand for absenting themselves on the date of pronouncing the judgment. Therefore, on that reasoning, the petition was dismissed.

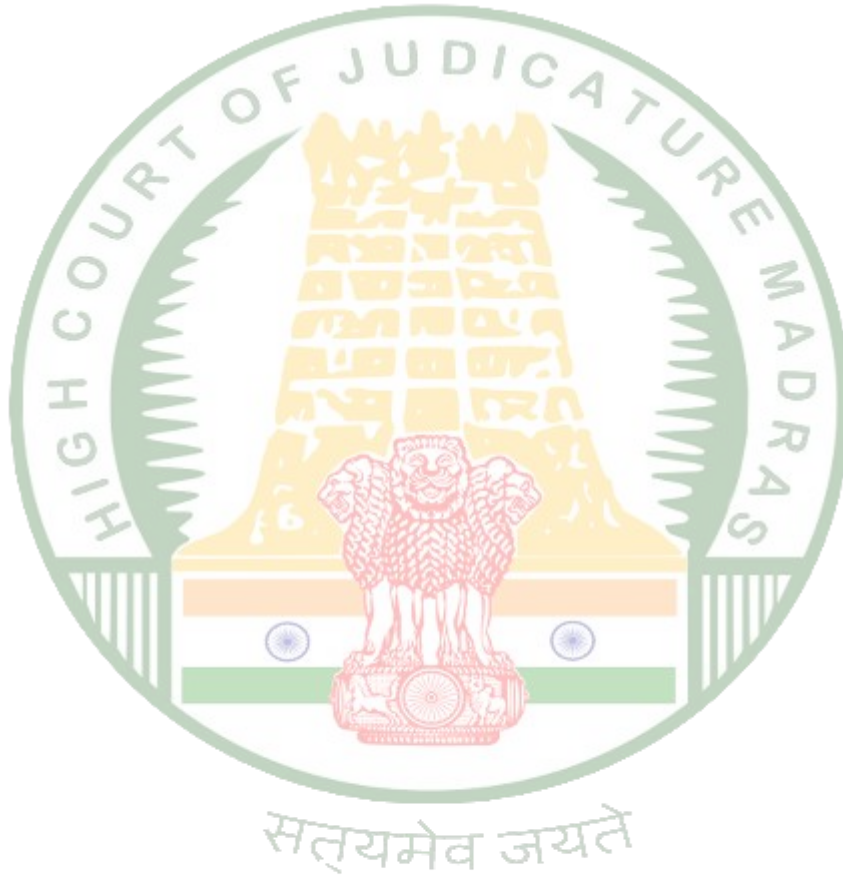
5. I have considered the submissions made by the learned counsel appearing for the petitioner as well as the 1st respondent and perused the materials placed before me.

6. It is the case of the petitioner that on the date of pronouncement of the judgment by Trial Court on 1.6.2017, the petitioner in fact went to the

Court, but belatedly. In the meanwhile, since the petitioner was not present, the learned Trial Judge has issued non bailable warrant against the petitioner. Fearing his arrest, he did not chose to file any petition to recall the said non bailable warrant. Instead, the petitioner had approached the First Appellate Court, where along with regular appeal, he had failed the present petition to suspend the sentence and the same was rejected, which is impugned in this revision case.

7. Considering the facts and circumstances of the case, I am inclined to pass the following order in this revision case :-

- (i) The impugned order is set aside;*
- (ii) The petitioner shall appear before the First Appellate Court immediately, where he can seek for consideration of the petition filed to suspend the sentence;*
- (iii) On the petitioner appearing before it, the First Appellate Court shall take up the said petition, decide the same on merits, on the same day itself.*
- (iv) It is needless to state that the reason adduced by the petitioner at paragraph 2 of the petition that he did appear on the date of pronouncement of the judgment but not exactly at the time of pronouncement, shall also be taken into consideration and accordingly, a decision can be arrived at by the First Appellate Court.*



WEB COPY

R.SURESH KUMAR, J.

(tar)

8. With this direction, the revision case is disposed of. Consequently,
Crl.M.P.No.7400 of 2017 is closed.

17.07.2017

tar

To

- 1.The Principal District Sessions Judge, Coimbatore.
- 2.The Public Prosecutor, Madras High Court



WEB COPY

Crl.R.C.No.804 OF 2017