

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2017

CORAM

THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Crl.O.P.No.3950 of 2017

and

Crl.MP No.4058 of 2017

Vijayalakshmi

... Petitioner

Vs

1.S.Diwakar

2.The State rep. by
Public Prosecutor,
Coimbatore.

... Respondents

Criminal Original Petition filed under Section 389(ii) Cr.P.C. to set aside the order dated 06.02.2017 passed in Crl.MP.No.324 of 2017 in CA No.25 of 2017 on the file of the Principal District and Sessions Judge, Coimbatore and Consequently, suspend the sentence order passed in CC No.373 of 2013 dated 19.01.2017 on the file of the Judicial Magistrate, Fast Track, Magisterial Level-1, Coimbatore.

For Petitioner : Mr.J.Pothiraj
For R2 : Mr.C.Emalias,
Addl.Public Prosecutor.

ORDER

This Criminal Original Petition has been filed to set aside the order dated 06.02.2017 passed in Crl.MP.No.324 of 2017 in CA No.25 of 2017 on the file of the learned Principal District and Sessions Judge, Coimbatore and consequently, suspend the sentence order dated 19.01.2017 passed by the learned Judicial Magistrate, Fast Track, Magisterial Level-1, Coimbatore in CC No.373 of 2013.

2. It is the case of the petitioner that by judgment dated 19.01.2017, passed by the learned Judicial Magistrate, Fast Track, Magisterial Level-1, Coimbatore in CC No.373 of 2013, she was convicted for the offence under Section 138 of the Negotiable Instruments Act and she was sentenced to undergo simple imprisonment for a period of one year and pay a sum of Rs.20,00,000/- as compensation along with interest at 6% p.a., in default, to undergo simple imprisonment for a period of six months. Further, the learned Magistrate has issued a non bailable warrant against the petitioner, as she was not present at the time of pronouncing the said judgment. Challenging the

said judgment, she has preferred an appeal in CA No.25 of 2017, before the learned Principal District and Sessions Judge, Coimbatore, who, by judgment dated 06.02.2017, dismissed the appeal. Aggrieved over the same, the petitioner is before this Court with the present petition.

3. Learned counsel for the petitioner submitted that the petitioner is suffering from heart ailment, abdomen cancer and diabetes and due to her ill-health, she was not present on the date of pronouncing the judgment by the trial court. As such, her non-appearance before the trial court on the particular date is neither wilful nor wanton. Learned counsel further submitted that the petitioner is ready and willing to abide by any condition that may be imposed by this Court.

4. I have also heard the learned Additional Public Prosecutor, who took notice for the second respondent.

5. Having considered the facts and circumstances of the case and taking note of the ill-health of the petitioner, this Court directs the petitioner to appear before the learned Judicial Magistrate, Fast Track Magisterial Level-1, Coimbatore on 10.04.2017 by filing an application under Section 70(2) Cr.P.C to re-call the warrant issued in CC No.373 of 2013 and on filing of such application, the learned Magistrate shall consider the same and pass appropriate orders on the same day. This Criminal Original Petition is disposed of accordingly. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal District and Sessions Judge, Coimbatore.
- 2.The Judicial Magistrate, Fast Track, Magisterial Level-1, Coimbatore.
- 3.The Public Prosecutor, Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.J. Pothiraj, Advocate, S.R.No.19358

ks (CO)

md(05/04/2017)

Cr1.O.P.No.3950 of 2017