

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal R.C. No.1678 of 2016
and Crl MP No.13869 of 2016

The Rajiv Gandhi Memorial Educational Charitable Trust
Rep. By Mr.Anbarasu,
No.36, Anjaneyar Koil Street,
Chennai 56. Petitioner

Vs.

Mukanchand Bothra Respondent

PRAYER: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, praying to call for the records in Crl. A.No.225 of 2016 on the file of the Court of Principal Sessions Judge, Chennai and to set aside the order in Crl. MP No.13457 of 2016 dated 11.11.2016.

For Petitioner : Mr.R.Vivekananthan

For Respondent : Mr.S.Mukanchand Bothra
Party in person

JUDGMENT

The Revision has been filed against the order passed by the learned Principal Sessions Judge, City Civil Court, Chennai in Crl MP. No.13457 of 2016 in C.A.No.225 of 2016 dated 11.11.2016, while suspending the sentence directing the petitioner/1st accused to deposit a sum of Rs.25 lakhs to the Credit of C.C.No.11127 of 2006 on or before 13.12.2016 before the Court concerned.

2. The brief facts of the case are as follows:

The petitioner/1st accused along with three other accused were convicted for the offence Under Section 138 of Negotiable Instrument Act. The 1st respondent, a trust was directed to deposit the cheque amount of Rs.35,00,000/- and the amount was directed to be paid to the complainant under Section 357 Cr.P.C. as compensation and the accused R2 to R4 were sentenced to under go two years rigorous imprisonment.

Challenging the order directing the petitioner to pay compensation, an appeal was filed. Pending appeal, the petitioner/trust filed a petition seeking to suspend the condition imposed to pay compensation of Rs.35 lakhs till the disposal of the appeal. The Appellate Court directed the petitioner to deposit a sum of Rs.25,00,000/- out of Rs.35 lakhs and depositing the remaining portion of the compensation amount of Rs.10 lakhs was suspended till the disposal of the appeal. Challenging the above the petitioner is before this Court with this Revision.

3. The learned counsel appearing for the petitioner would submit that at the time of filing the appeal the petitioner deposited Rs.3 lakhs and it is lying in the Court and contended that the condition imposed by the trial Court is onerous and not reasonable.

4. The respondent is appearing as party in person and he would contend that complaint was given in the year 2006. For nearly 10 years, the matter has been dragged on by the accused. Even though the Trial Court ordered compensation of Rs.35 lakhs, the petitioner is not willing to pay the amount. Further, the appellate Court has directed the petitioner only to pay a portion of the compensation amount pending disposal of the appeal and it cannot be said to be onerous. Hence he sought for sustaining the order passed by the appellate Court.

5. Considering the rival submissions made by both the parties, this Court is of the view that even though the Appellate Court is entitled to impose condition to deposit the amount, for suspending the sentence, such condition should be reasonable. The Appellate court has suspended the sentence of accused 2 to 4 and no condition was imposed, and imposed the condition to deposit Rs.35 lakhs on the first accused alone. The petitioner/first accused being the trust this Court feels that the condition imposed by the trial Court is onerous. It is also not disputed that the petitioner had already deposited Rs.3 lakhs at the time of filing the appeal before the Appellate Court. In the above circumstances the impugned order passed by the Appellate Court is set aside and the order of the trial Court directing the petitioner/first accused to deposit a sum of Rs.35 lakhs is suspended pending Appeal.

6. The learned counsel for the respondent would submit that apart from the Appeal filed by the petitioner/1st Accused in Criminal Appeal No. 225 of 2016, pending on the file of IV Additional Sessions Judge, City Civil Court, Chennai, A-2 and A-4 have filed an appeal No.110 of 2015, now pending on the file of III Additional Sessions Judge, City Civil Court, Chennai and the third accused has filed a separate appeal No.106 of 2015 and

it is pending on the file of IV Additional Sessions Judge, City Civil Court, Chennai. It is further stated that when all the appeal arise out of common judgment, it is just and proper that all the appeals are heard together.

7. Considering the above fact and circumstances of the case, the learned Principal Judge, City Civil Court, Chennai is directed to transfer CA.No.110 of 2015 pending before the III Additional Sessions Judge, City Civil Court, Chennai, to the file of learned IV Additional Sessions Judge, City Civil Court where Criminal Appeal Nos. 106 of 2015 and 225 of 2015 are pending for the purpose of hearing all the appeals together. The Principal Sessions Judge is directed to transfer the case referred to above immediately, and on such transfer the learned IV Additional Sessions Judge, City Civil Court, Chennai is directed to dispose all the appeals on or before 23.06.2017 after hearing the parties concern.

8. With the above direction, the Criminal Revision Case is disposed of. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Sessions Judge.
City Civil Court,
Chennai.

2.The III Additional Sessions Judge,
City Civil Court, Chennai.

3.The IV Additional Sessions Judge,
City Civil Court, Chennai.

+2cc to Mr.Mukanchand Bothra, Advocate Sr.22055

Criminal R.C. No.1678 of 2016

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srg 12/04/2017