

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 30..06..2017

Order Pronounced on : 11..07..2017

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.R.C.No.785 of 2017
and
Crl.M.P.No.7206 of 2017

G.S.Sivanandham

... Petitioner

-Versus-

V.S.Shanmugam

... Respondent

Criminal Revision Case filed under Sections 397 r/w 401 of Cr.P.C. praying to set aside the order dated 03.05.2017 made in Crl.M.P.No.122 of 2017 in Crl.A.No.98 of 2017 by the learned Additional Sessions Judge, Magalir Neethi Mandram [Fast Track Mahila Court], Erode, thereby refusing to suspend the sentence imposed on the petitioner for offence under Section 138 of the Negotiable Instrument Act by judgment dated 10.04.2017 in C.C.No.201 of 2009 by the learned Judicial Magistrate-I, Gopichettipalayam, Erode District.

For Petitioner : Mr.S.Silambu Selvan

ORDER

This Criminal Revision is filed against the order of the learned Additional Sessions Judge, Magalir Neethimandram [Fast Track Mahila Court], Erode, refusing to suspend the sentence of imprisonment by the learned Judicial Magistrate-I, Gopichettipalayam, Erode District.

2. The above said calendar case was instituted based on a private complaint filed by the respondent herein. The petitioner is the accused in the private complaint filed by the respondent herein. The said private complaint was filed alleging that the petitioner has committed an offence punishable under Section 138 of The Negotiable Instruments Act. After full-fledged trial, the learned Magistrate reserved the case for judgement. But, on the date when the case was listed for judgement, the petitioner did not appear. The learned Magistrate, however, proceeded to pass judgement thereby convicting the petitioner for offence under Section 138 of IPC and sentencing him thereunder to suffer simple imprisonment for 1 year and 6 months. It is seen from the impugned order that on the date of judgement, itself, a non bailable conviction warrant came to be issued by the learned Magistrate against the petitioner herein. Thereafter, challenging the conviction and sentence the petitioner has filed an appeal in Crl.A.No.98 of 2017 before the learned Additional Sessions Judge, Magalir Neethi

Mandram [Fast Track Mahila Court], Erode, along with an application seeking suspension of sentence imposed on him by the learned Magistrate which was dismissed by the learned Additional Sessions Judge. Challenging the above said order , the petitioner is before this court with the present criminal revision.

3. This Criminal Revision has come up today for admission. I have heard the learned counsel for the petitioner. I do not propose to issue notice to the respondent in view of the fact that the order that I pass herein, will not cause any prejudice to him.

4. Admittedly, on the date when the judgment was pronounced by the learned Magistrate the petitioner did not appear and as such conviction warrant was issued against the petitioner and the same is yet to be executed. The petitioner without surrendering himself before the learned Magistrate approached the trial court seeking suspension of sentence at the time when he challenged the conviction and sentence. The petitioner immediately after having come to know that there was a judgment against him and a warrant has also been issued against him, he should have approached the trial court along with appropriate applications seeking to recall the conviction warrant and to suspend the sentence explaining the reasons which refrained him from appearing before the court below on the

date when the judgement was pronounced and obtained orders in his favour and thereafter, he should have approached the appellate court chellnging the conviction and sentence and also seeking for suspension of sentence. But, he did chose to do so and instead he directed appraoched the appellate court for relief.

5. In the light of the above facts and circumstances of the case, it would be proper to direct the petitioner to surrender himself before the learned Magistrate within a period of one week from the date of receipt of a copy of this order and the learned Magistrate shall recall the conviction warrant forthwith. The petitioner shall thereafter approach the learned Additional Sessions Judge, Mahila Fast Track Court, Erode, within a further two weeks time by way of fresh application for suspension of sentence and on such filing of application by the petitioner, the learned Additional Sessins Judge shall consider the same liberaly on the same day and proceed with the case further in accordance with law.

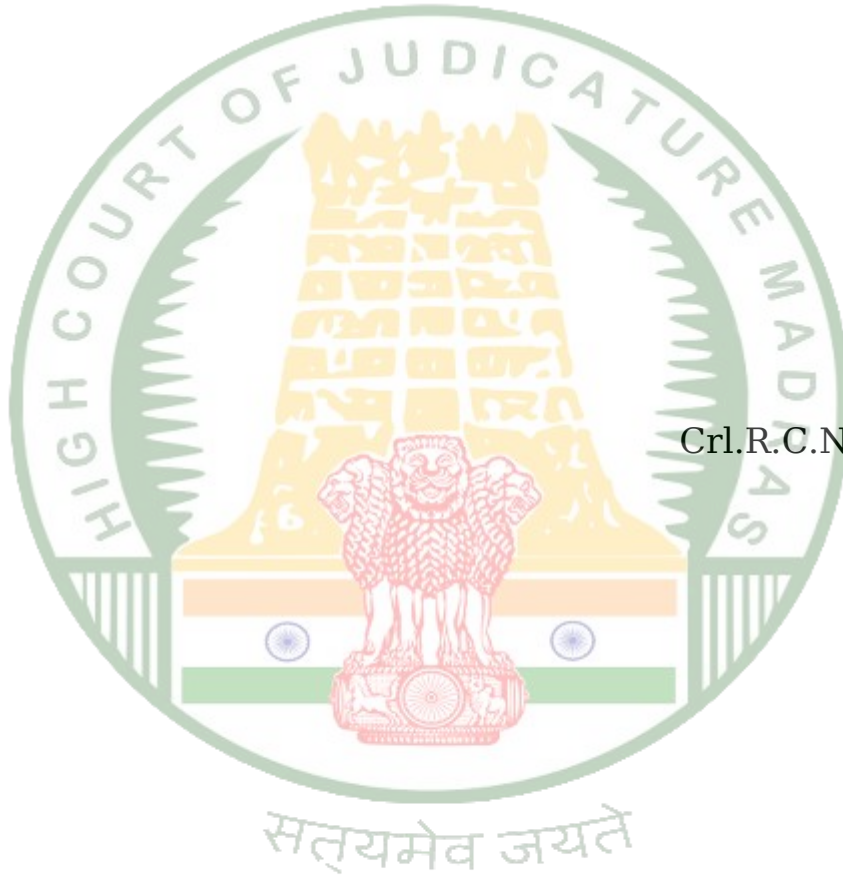
6. **In the result**, the impugned order is set aside and the criminal revision is disposed of with the above directions. Consequently, connected Crl.M.P. is closed.

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11..07..2017

V.BHARATHIDASAN.J.,

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