

IN THE HIGH COURT OF JUDICATURE AT MADRAS**DATED : 16.11.2017****CORAM****THE HONOURABLE MR. JUSTICE M.S.RAMESH****CRL.O.P.No.18594 of 2017****and****CRL.MP.No.14163 of 2017**

Akula Venkata Naga Suresh

..Petitioner

Vs

Vempalli Satya Prabhakara Rao

...Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order of return passed by the learned Judicial Magistrate at Yanam dated 20.04.2017 and direct him to accept the sureties as per the order of the learned III Additional Sessions Judge dated 27.03.2017 in Crl.MP.No.24 of 2017 in C.A.No.11 of 2017 without insisting the petitioner to pay the compensation amount.

For Petitioner : Mr.V.V.Sairam

For Respondent : Mr.M.Ravi

ORDER

The Judgment in STC.No.64 of 2016 on the file of the learned Judicial Magistrate, Yanam, dated 09.03.2017, against the petitioner was challenged before the learned III Additional District and Sessions Judge, Puducherry, dated 27.03.2017 in Crl.MP.No.24 of 2017 in C.A.No.11 of 2017.

2. In the petition, the sentence alone came to be suspended

with the condition that the petitioner shall execute a bond for a sum of Rs.10,000/- with two sureties for a lumpsum of each to the satisfaction of the learned Judicial Magistrate, Yanam and the learned Judicial Magistrate, Yanam, has passed the returned order on 20.04.2017.

3. Since the sentence imposed on the petitioner alone was suspended, the learned Judicial Magistrate, Yanam, had directed the return of the petitioner's application seeking furnishing of sureties on the ground that the compensation amount has to be deposited.

4. Challenging the same, the present Criminal Original Petition has been filed.

5. Mr.M.Ravi, learned counsel appearing for the second respondent vehemently opposed the petition stating that since the trial court has already found the petitioner guilty of having committed the offence u/s.138 of the Negotiable Instrument Act, in order to secure the cheque amount, it would be appropriate for the petitioner herein to direct the deposit.

6. It is needless to point out that whenever a aggrieved person files an appeal against the trial court order, it would not be appropriate to direct the appellant to deposit the cheque amount before the trial court for the simple reason that, in case, the appellant succeeds in future, serious

prejudice would be caused to him. There is no provision in the Code of Criminal Procedure which warrants such deposit as pre-condition to suspend his sentence. In view of the same, there is no justification on the part of the trial court to insist on the petitioner to make the deposit.

7. At this juncture, learned counsel for the petitioner also submitted that the Non-Bailable Warrant has been issued as against the petitioner in STC.No.64 of 2016.

8. Accordingly, the return order dated 20.04.2017 on the file of the Judicial Magistrate, Yanam, made in CrI.MP. 24/2017 on the file of the III Additional District and Sessions Judge dated 27.03.2017, is set aside. Consequently, the learned Judicial Magistrate, Yanam, is directed to accept two sureties furnished by the petitioner as ordered by the III Additional District and Sessions Judge dated 27.03.2017 in CrI.MP.No.24 of 2017, without insisting for any cash deposit. The learned Judicial Magistrate, Yanam, shall endeavour to dispose of the appeal as expeditiously as possible.

9. In view of my earlier observation that the petitioner is entitled to have his sentence suspended without any pre-condition of deposit, the Non-Bailable Warrant issued in the name of the petitioner, if any, shall stand recalled.

With the above observation, Criminal Original Petition is allowed.
Consequently, connected miscellaneous petition is also allowed.

16.11.2017

Index: Yes/No

Speaking/Non-speaking order

gv/rkp

Note to Office:

1.The Registry is directed to return the original impugned order to the petitioner after replacing the same copy.

2. Issue order copy on 20.11.2017

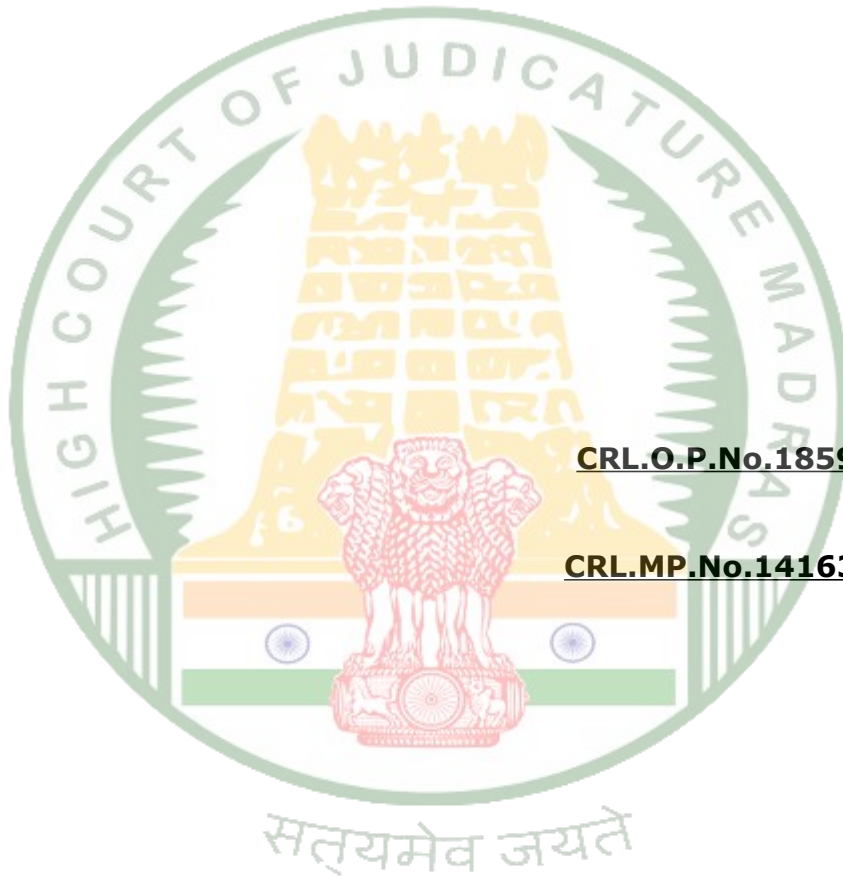
To

1. The learned Judicial Magistrate, Yanam
- 2.The learned III Additional District & Sessions Judge.

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M.S.RAMESH.J,

gv



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and

CRL.MP.No.14163 of 2017

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