

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL PETITION No.2648 OF 2017

ORDER:

Requesting to quash Criminal M.P. No.94 of 2017 in C.C. No.177 of 2013 on the file of V Special Magistrate, Hasthinapuram at Ranga Reddy District, under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Code'), the present Criminal Petition is filed by the petitioner - accused.

2. Heard Sri Vedula Srinivas, learned counsel for the petitioner, and Sri K. Papi Reddy, learned counsel for respondent No.1, and perused the material on record.

3. Learned counsel for the petitioner would submit that this Court in Criminal R.C. No.1693 of 2015, while admitting the same on 20.08.2015, suspended sentence of imprisonment imposed by the Court below in the aforesaid C.C. and ordered to release the petitioner on bail on his executing a personal bond for a sum of Rs.50,000/- with two sureties for a like sum each to the satisfaction of the V Special Magistrate, Hasthinapuram, Ranga Reddy District, and, when the imprisonment is, thus, suspended by this Court, the default sentence for non-payment of fine amount of Rs.11,60,000/- to undergo three (3) years simple imprisonment would also come within the fold of interim suspension order granted by this Court as the imprisonment is suspended by this Court in the aforesaid Criminal Revision Case and, therefore, the petition in Criminal M.P. No.94 of 2017 filed by the 1st

respondent seeking a direction to pay the fine amount of Rs.11,60,000/- and in default to imprison the petitioner, is not maintainable and, thus, sought to quash Criminal M.P. No.94 of 2017.

4. Per contra, learned counsel for the 1st respondent would submit that the very expression used by this Court in the interim order granted by this Court in Criminal R.C. No.1693 of 2015 would indicate that the sentence of imprisonment imposed by the Court below against the petitioner alone is suspended would in unmistakable terms indicate, what was suspended is period of imprisonment inflicted on the petitioner and not the default sentence associated with payment of Rs.11,60,000/- towards fine amount.

5. Certain relevant facts are necessary to advert to in appreciating the aforesaid submissions made by both the counsel.

6. For the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, the 1st respondent filed a complaint against the petitioner and the same was registered as C.C. No.177 of 2013 and disposed of by the learned V Special Magistrate, Hasthinapuram, Ranga Reddy District. The learned Magistrate having found the petitioner guilty of the offence, inflicted sentence of simple imprisonment for one year and ordered him to pay a fine of Rs.11,60,000/-, and, in default, to suffer simple imprisonment for a period of three (3) months.

7. Aggrieved over the same, when the petitioner preferred Criminal Appeal No.434 of 2014 on the file of V Additional Metropolitan Sessions Judge - cum - V Additional District and Sessions Judge, L.B. Nagar, Ranga Reddy District, the same was dismissed on 18.08.2015, confirming the judgment of the learned Magistrate. The petitioner, having got aggrieved, preferred Criminal Revision Case No.1693 of 2015 on the file of this Court. The said revision was admitted on 20.08.2015 and at the stage of admission, this Court passed the interim order, thus:

“the sentence of imprisonment imposed by the Court below against the petitioner accused alone is suspended and the petitioner shall be released on bail on his executing a personal bond for a sum of Rs.50,000/- with two sureties with a like sum to the satisfaction of the V Special Magistrate, Hasthinapuram, Ranga Reddy District.”

8. Thus, while the Criminal Revision Case is pending, the 1st respondent filed Criminal M.P. No.94 of 2017 requesting the learned Magistrate to direct the petitioner to pay the fine amount of Rs.11,60,000/- and in default to imprison the petitioner to serve the default sentence. It is stated that it is to be found from the submissions as well as record, the learned Magistrate has appointed a Commission to cause arrest of the petitioner and to produce him before the Court. The Advocate-Commissioner has approached the office of SBI Life insurance, Basheerbagh, where the petitioner has been working to cause his arrest. The petitioner felt serious

embarrassment and his employer arrived at a tentative conclusion to terminate him. The learned counsel would submit that filing of Criminal M.P. No.94 of 2017 itself is an abuse of legal process and it is a harassment to the petitioner and appointment of an Advocate-Commissioner to cause arrest of an accused is unheard of and not provided in the Code and the Court below is acting in the manner without application of mind and contrary to the law and unless Criminal M.P. No.94 of 2017 is quashed, the petitioner is put to irreparable loss.

9. For further better appreciation, it is necessary to refer to the averments in paragraph No.2 of the present Criminal Petition, which read thus:

“On the basis of the above mentioned averments, the trial of the C.C. No.177 of 2013 took place and the trial Court has imposed the punishment of one year simple imprisonment for the offence U/s.138 of N.I. Act. The Court has also directed the petitioner herein to pay Rs.11,60,000/- to the complainant and in default to suffer simple imprisonment for three months. Thus totally a sentence of simple imprisonment of one year and three months was imposed on the petitioner”

10. When looked at the request made by the petitioner and the grounds on the basis of which, the present request is made, virtually, the petitioner is interpreting the suspension order passed by this Court in Criminal R.C. No.1693 of 2015. When a suspension order is

passed by a learned Single Judge of this Court in the aforesaid revision, certainly, it is not for me to interpret the order passed by the learned Single Judge in the said revision. Hence, it is for the petitioner to seek clarification instead of assuming himself that the suspension order connotes not only suspension of sentence of imprisonment inflicted on him, but also the default sentence. Further, when the petitioner is of the opinion that Criminal M.P. No.94 of 2017 is not maintainable in view of suspension of sentence of imprisonment passed by the learned Single Judge in the revision, proper course would be to approach the Court which passed the order in the revision and seek clarification of the same.

11. With the above observations, the Criminal Petition is disposed of, at the admission stage itself.

As a sequel thereto, Miscellaneous Petitions, if any, pending in the Criminal Petition stand closed.

A. SHANKAR NARAYANA, J

April 21, 2017.

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