

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2018

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.O.P.No.16406 of 2018

N.Mohamed Hussian

... Petitioner/Accused

Vs

The State represented by
The Inspector of Police,
Airport Police Station,
Chennai-600 027.
Crime No.165/2010

... Respondent/Complainant

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to set aside the order passed on 23.03.2018 in Crl.M.P.No.1201 of 2018 in Crl.M.P.No.3033 of 2017 in C.A.No.63 of 2017 by the Principal Sessions Judge at Chengalpet and extend time to surrender before the Court and execute bond.

For Petitioner : Mr.T.Varadarajulu

For Respondent : Ms.P.Kritika Kamal,
Government Advocate (Crl Side)

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 23.03.2018 passed by the Principal Sessions Judge, Chengleput in Crl.M.P.No.1201 of 2018 in Crl.M.P.No.3033 of 2017 in C.A.No.63 of 2017 and extend time to surrender before the Court and execute bond.

2. Heard the learned counsel for the petitioner, the learned Government Advocate [Crl. Side] appearing for the respondent and perused the materials placed on record.

3. The petitioner was convicted and sentenced in C.C.No.624 of 2010 by the learned Judicial Magistrate, Alandur for the offences under Section 384 I.P.C and was directed to undergo three years Rigorous Imprisonment. On the date of passing of the Judgment, the trial Court suspended the sentence under Section 389 (3) Cr.P.C. on the undertaking given by the petitioner that he will file an appeal before the Sessions Court. Accordingly, the petitioner filed Crl.A.No.63 of 2017 before the Sessions Court and the learned Principal

District and Sessions Judge, Chengalpet, by order dated 07.09.2017 in CrI.M.P.No.3033 of 2017 in CrI.A.No.63 of 2017, suspended the sentence and released the petitioner on bail on condition that the petitioner shall surrender before the trial Court and execute a fresh bond for Rs.10,000/- [Rupees Ten Thousand Only] with two sureties. Thereafter, the petitioner was directed to appear before the appellate Court on 06.10.2017. The petitioner did not comply with the said order and therefore, the petitioner filed CrI.M.P.No.1201 of 2018 before the Sessions Court for extension of time, which has been dismissed by the Sessions Court on 23.04.2018. Challenging which, the petitioner is before this Court.

4. Mr.Varadarajulu, learned counsel for the petitioner submitted that the petitioner was sick and therefore, he did not comply with the order passed by the appellate Court.

5. This Court gave its anxious consideration to the submission of the learned counsel. When an accused is convicted and sentenced to undergo imprisonment up to three years, the trial Court and the appellate Court have power to suspend the sentence under Section 389 Cr.P.C on certain conditions. In this case, both the trial Court and the Sessions Court was pleased to suspend the sentence as stated above. The petitioner did not bother to surrender before the Magistrate and appear before the Sessions Court on 06.10.2017. The petitioner could have instructed the counsel to file an application under Section 317 Cr.P.C. on 06.10.2017, which he did not do. This itself shows that the petitioner will not comply with the conditions of bail, in the event of the appeal being dismissed. Under such circumstances, this Court does not find any good reasons to set aside the order passed by the first appellate Court. It is open to the petitioner to surrender before the first appellate Court in person within one week from the date of receipt of a copy of this order and seek for extension of time. The Appellate Court can either extend the time or remand him to custody and grant him regular bail as it deems fit.

With the above direction, this petition is closed.

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Sessions Judge,
Kanchipuram at Chengalput.

2.The Judicial Magistrate,
Alandur.

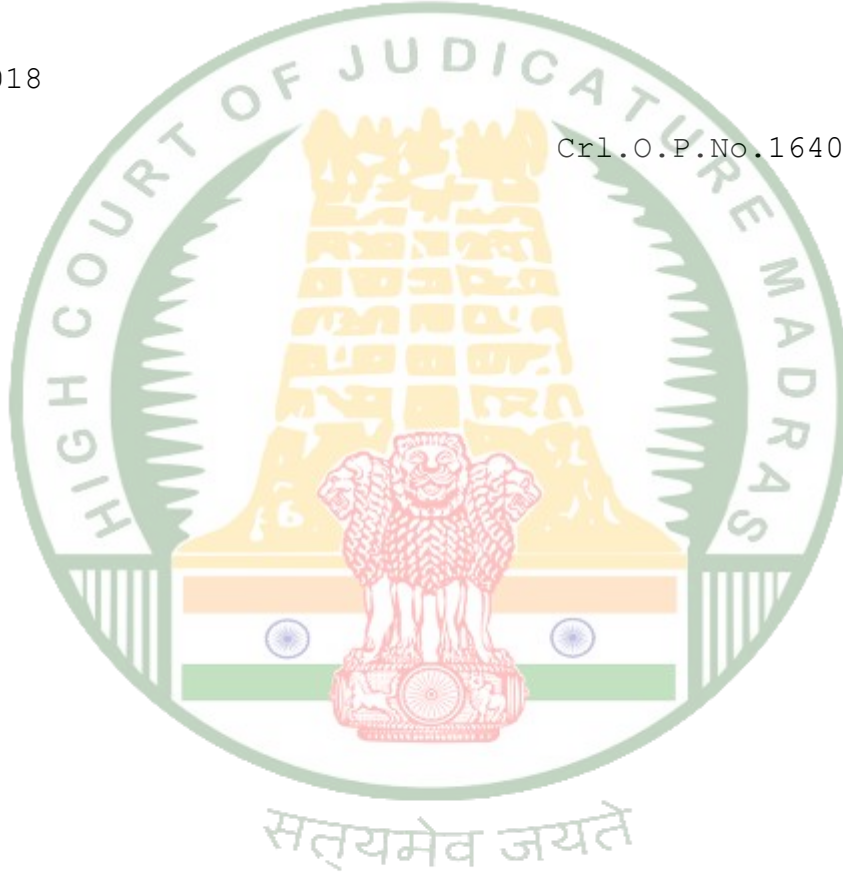
3.The Inspector of Police,
Airport Police Station,
Chennai-600 027.

4.The Public Prosecutor,
High Court, Madras.

+lcc to M/s.S.T.Varadarajulu, Advocate Sr.No.40535

AD(CO)
sm:27.6.2018

Cr1.O.P.No.16406 of 2018



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