

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.10.2018

CORAM :

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.O.P.No.19305 of 2017 and
Crl.M.P.No.11686 of 2017

1. Shree Adhikesavan Modern Rice Mill, (Veedur)
Rep. by its Proprietor K.Palani,
No.57 D. Opposite to new quarters,
Jayapuram Colony, Tindivanam,
Vippupuram-"District".
2. K.Palani ... Petitioners
Vs
M.Chandrasekar Reddiyar ... Respondent

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in Crl.M.P.No.2216 of 2017 in C.A.No.33 of 2017 dated 20.06.2017 and to "Set-aside" the order passed by the Hon'ble Principal Sessions and District Judge, Villupuram, now transferred on the file of the Hon'ble Additional District and Sessions Judge No.1, Tindivanam.

For Petitioners : Mr.M.Arumugam

For Respondent : Mr.E.P.Suntharaam

O R D E R

This Criminal Original Petition has been filed to call for the records and set aside the order passed by the Principal Sessions Judge, Villupuram, in Crl.M.P.No.2216 of 2017 in C.A.No.33 of 2017, dated 20.06.2017, now transferred to the file of the Additional District and Sessions Court No.1, Tindivanam.

2. The petitioners herein faced prosecution in C.C. No.54 of 2011 before the Judicial Magistrate Court No.I, Tindivanam, for the offence under Section 138 of the Negotiable Instruments Act and were convicted on 08.03.2017 and were sentenced to pay a fine of Rs.2,55,000/- each (totally Rs.5,10,000/-), out of which, the trial Court had directed that the complainant should be paid Rs.5,00,000/- being the cheque amount as compensation, in default, to undergo six months imprisonment.

3. Challenging the conviction and sentence, the petitioners/accused have filed C.A.No.33 of 2017 before the Sessions Court, Villupuram and in C.M.P.No.2216 of 2017 in C.A.No.33 of 2017, they had prayed for suspension of the sentence imposed by the trial Court. The Principal Sessions Judge, Villupuram has passed the following order in C.M.P.No.2216 of 2017 in C.A.No.33 of 2017, on 20.06.2017, which reads as follows:

"Heard. Perusal the records. Hence the sentence alone will be suspended, on depositing of a sum of Rs.1,00,000/- as cash security out of fine amount of Rs.5,10,000/- by the 2nd petitioner before the lower court as well as on their executing a bond for Rs.10,000/- each with two sureties each for a like sum each to the satisfaction of the Judicial Magistrate No.I, Tindivanam till the disposal of criminal appeal. The petitioners shall appear before the I Additional District Judge, Tindivanam on 4.7.2017 without fail."

Not satisfied with this order, the petitioners/accused are before this Court.

4. Heard Mr.M.Arumugam, learned counsel for the petitioners/accused, who placed strong reliance on the judgment of the Supreme Court in the case of K.Subramani v. K.Damodara Naidu [(2015) 1 SCC 99] and contended that the Appellate Court has no authority to pass such a conditional order.

5. Per contra, the learned counsel for the respondent/complainant placed strong reliance on the judgment of the Supreme Court in the case of Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. [(2007) 6 SCC 528], and submitted that, while suspending the sentence, the Appellate Court has the power to pass a conditional order.

6. This Court gave its anxious consideration to the rival submissions.

7. Mr.M.Arumugam contended that P.W.1, in his evidence, has not established the case of the complainant beyond doubt.

8. In the opinion of this Court, the evidence of P.W.1 cannot be appreciated in a petition under Section 482 Cr.P.C., because the appeal filed by the accused is pending in C.A.No.33 of 2017 before the Sessions Court, Villupuram, and it is for the Sessions Court to appreciate the evidence of P.W.1.

9. As regards the judgment relied upon by Mr.M.Arumugam cited supra, it relates to a regular appeal, filed after the evidence has been adduced before the trial Court. The said judgment does not relate to the power of the Appellate Court to pass a conditional order, while suspending the sentence.

10. On the contrary in Dilip S. Dahanukar v. Kotak Mahindra Co. Ltd. [(2007) 6 SCC 528], the Supreme Court has clearly stated in Para No.72 as follows:

"72. ...

(ii) the appellate court, however, while suspending the sentence, was entitled to put the appellant on terms. However, no such term could be put as a condition precedent for entertaining the appeal which is a constitutional and statutory right;"

11. In this case, the trial Court had directed the accused to pay a fine to a total sum of Rs.5,10,000/-. Under normal circumstances, the Appellate Court will not suspend the sentence of fine, however, in this case, the Session Judge has shown indulgence in suspending the sentence of fine and has directed the accused to deposit Rs.1,00,000/- as cash security. Therefore, this Court finds no infirmity in the order passed by the Sessions Court warranting interference.

12. The Appellate Court is directed to dispose of the appeal in C.A.No.33 of 2017, within a period of three months from the date of receipt of a copy of this order. If the appellant does not co-operate, his bail can be cancelled and he can be remanded to custody.

With the above direction, this petition is closed. Consequently, connected Miscellaneous Petition is closed.

mkn/ssr

Sd/-
Assistant Registrar (CS)

//True Copy//

Sub Assistant Registrar

To

1. The Additional District and Sessions Judge No.1, Tindivanam.
2. The Principal District and Sessions Judge, Villupuram.

+1cc to Mr.E.P.Suntharaam , Advocate SR.No. 69527
+1cc to Mr.M.Arumugam , Advocate SR.No. 70182

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