



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.08.2018

CORAM:

WEB COPY

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P.(MD)Nos.20488 of 2016 and 13796 of 2018

CRL.O.P.(MD)No.20488 of 2016.

Velusamy ... Petitioner/Petitioner

/Vs./

1.Shanmugam

2.The Public Prosecutor,
Dindigul District.

... Respondents/Respondents

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to direct the learned Principal District and Sessions Judge, Dindigul to take the unnumbered Criminal Appeal as against the Judgment dated 25.04.2016 passed by the Judicial Magistrate, Kodaikanal in S.T.C.No.423 of 2015 by setting aside the order passed by the learned District Judge, Dindigul, dated 14.07.2016 in Cr.M.P.No.1373 of 2016.

For Petitioner : Mr.I.Sam Jegan

For Respondents : Mr.K.Anna for R1

Mr.K.Suyambulinga Bharathi for R2
Government Advocate (Crl. Side)

CRL.O.P.(MD)No.13796 of 2018.

P.Shanmuganathan ... Petitioner/Petitioner/Complainant

/Vs./

Velusamy ... Respondent/Respondent/Accused

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to direct the learned District Munsif cum Judicial Magistrate, Kodaikanal to dispose the application pending before him in Crl.M.P.No.631 of 2017 sought for the issuance of warrant of arrest as against the respondent/accused to obey the conviction and sentence passed in S.T.C.No.423 of 2015, dated 25.04.2016.

For Petitioner : Mr.K.Anna

For Respondent : Mr.I.Sam Jegan

COMMON ORDER

Crl.O.P(MD).No.20488 of 2016 has been filed by the accused against the dismissal of the petition filed by the petitioner to condone the delay of seven days in filing an appeal against the



judgment in S.T.C.No.423 of 2015 convicting and sentencing the petitioner for an offence under Section 138 of Negotiable Instruments Act.

Crl.O.P(MD).No.13796 of 2018 has been filed by the complainant in the 138 proceedings to issue a warrant of arrest against the respondent/accused in order to make him to undergo the sentence imposed in S.T.C.No.423 of 2015.

2.From the records, it is seen that the learned District Munsif cum Judicial Magistrate, Kodaikanal, by judgment dated 25.04.2016 was pleased to convict the petitioner in Crl.O.P(MD).No.20488 of 2016 for an offence under Section 138 of the Negotiable Instruments Act and a sentence of six months Simple Imprisonment with fine of Rs.2,000/- was imposed on the petitioner. As against this judgment, the petitioner in Crl.O.P(MD).No.20488 of 2016 filed an appeal with delay. In the meantime, the period of suspension of sentence granted by the Judicial Magistrate, Kodaikanal came to an end and therefore, the petitioner in Crl.O.P(MD).No.20488 of 2016 filed a petition for suspension of sentence before the Appellate Court and the same was returned as not maintainable. Challenging the same, Crl.O.P(MD).No.14400 of 2016 was filed before this Court and this Court, by an order dated 11.08.2016, was pleased to direct the Appellate Court to take the application for suspension of sentence on file and pass an order on merits.

3.By the time an order was passed in Crl.O.P(MD).No.14400 of 2016, the Appellate Court had dismissed the Section 5 application by an order, dated 14.07.2016 and therefore, virtually the order passed by this Court on 11.08.2016 became inoperative.

4.Challenging the dismissal of the condone delay petition, Crl.O.P(MD).No.20488 of 2016 has been filed. After the judgment of conviction and sentence was passed on 25.04.2016, the petitioner in Crl.O.P(MD).No.20488 of 2016 had managed to keep the proceedings alive for the last three years without prosecuting the appeal diligently. The petitioner in Crl.O.P(MD).No.13796 of 2018 who got an order in his favour was kept guessing as to stage of the case and ultimately he has approached this Court for execution of the sentence passed by the trial Court.

5.The petitioner in Crl.O.P(MD).No.20488 of 2016 has got a statutory right of appeal. At the same time, for having dragged on the proceedings for the last three years without diligently prosecuting the appeal, the petitioner can be permitted to prosecute the appeal only by putting him on condition. There was only a delay of seven days in filing the appeal.

6.Taking into consideration the facts and circumstances of the case, the order of the learned Principal District and Sessions Court, Dindigul, dated 14.07.2016 is hereby set aside. The petition to condone the delay in Cr.M.P.No.1373 of 2016 is hereby allowed.

7. Both the Criminal Original Petitions are disposed of with the following directions.

a) The petitioner in Crl.O.P(MD).No.20488 of 2016 is directed to deposit the cheque amount of Rs.30,000/- to the account of S.T.C.No.423 of 2015, before the District Munsif Cum Judicial Magistrate, Kotaikanal, within a period of three weeks from the date of receipt of a copy of this order;

b) The petitioner in Crl.O.P(MD).No.20488 of 2016 is further directed to pay cost of Rs.5,000/- to the respondent directly within a period of two weeks from the date of receipt of a copy of this order;

c) On compliance of the above two conditions along with the proof of such compliance, the petitioner shall file a memo before the Principal District and Sessions Judge, Dindigul within a period of one week thereafter;

d) On such memo being filed, the learned Principal District and Sessions Judge, Dindigul is directed to number and take the appeal on file and also entertain the petition for suspension of sentence filed by the petitioner in the appeal;

e) The learned Principal District and Sessions Judge, Dindigul is directed to dispose of the appeal within a period of six months from the date on which the appeal will be taken on file;

f) If the petitioner fails to comply with any of the condition stated in 'a,b and c', the appeal shall not be restored on file and in which event, the respondent/complainant is at liberty to file appropriate application for execution of the conviction and sentence passed by the learned District Munsif cum Judicial Magistrate, Kodaikanal in S.T.C.No.423 of 2015.

Sd/

Assistant Registrar(CS-I)

/True copy/

Sub Assistant Registrar(CS-III)

To

1.The Principal District and Sessions Judge, Dindigul.

2.The District Munsif cum Judicial Magistrate, Kodaikanal.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1cc to Mr.I.Sam Jegan, Advocate, SR.No.78252

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and 13796 of 2018
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