



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.11.2018

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE A.D. JAGADISH CHANDIRA

CRL OP(MD).No. 21011 of 2018

S. Kathirvel

...Petitioner/Appellat

Vs.

R. Senthilpandian

...Respondent/ Respondent

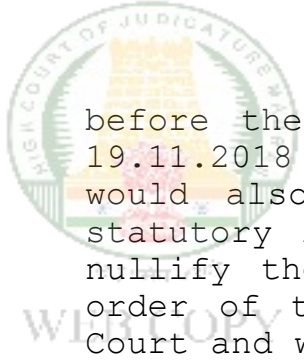
PRAYER: This Petition filed under Section 482 of Criminal Procedure Code, seeking to set aside the condition directing the petitioner to deposit a sum of Rs.2,00,000/-on or before 26.11.2018 before the Lower Court as imposed in Cr.M.P. No.5018 of 2018 in C.A. No.138 of 2018 on the file of the learned Principal Sessions Judge, Tiruchirappalli District, vide Order dated 19.11.2018.

For Petitioner: Mr.A. Thiruvadi Kumar

ORDER

The petition has been filed, seeking to set aside the condition directing the petitioner to deposit a sum of Rs.2,00,000/-on or before 26.11.2018 before the Lower Court as imposed in Cr.M.P. No.5018 of 2018 in C.A. No.138 of 2018 on the file of the learned Principal Sessions Judge, Tiruchirappalli District, vide Order dated 19.11.2018.

2. The learned Counsel for the petitioner would submit that the petitioner was convicted by the learned Judicial Magistrate-III (FAC), Tiruchirappalli in STC No.1 of 2016 for the offence under Section 138 of Negotiable Instruments Act, on the basis of the complaint lodged by the respondent. He would further submit that the learned Magistrate by order dated 15.10.2018 had convicted the petitioner to undergo 2-Years simple imprisonment and to pay compensation of Rs.3,50,000/-(Rupees Three Lakhs Fifty Thousand Only) to the complainant under Section 357(3) of Cr.P.C., and in default to undergo 2-months simple imprisonment and against the said Judgment, the petitioner preferred a Criminal Appeal before the learned Principal Sessions Judge, Tiruchirappalli in C.A.No.138 of 2018 and also filed an application to suspend the sentence under Section 389(2) of the Cr.P.C., in Cr.M.P. No.5018 of 2018. He would also submit that the learned Principal Sessions Judge, Tiruchirappalli, while suspending the sentence had imposed the condition, directing the petitioner to deposit a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) on or before 26.11.2018,



before the Lower Court while executing sureties vide Order dated 19.11.2018 and the case has been directed to list on 27.11.2018. He would also submit that right to an appeal is recognised as a statutory right and the order imposing condition to deposit would nullify the very purpose of appeal. He would further submit that order of the Trial Judge is also challenged before the Appellate Court and while so stay the order directing to deposit Rs.2 lakhs as a precondition for suspension of sentence is unsustainable in law. He would also submit that the petitioner had undergone serious medical ailment and by the conditional order he is put to great financial strain. He would submit that this Hon'ble Court in earlier Judgment reported in 2011 (1) L.W.(Crl.) 464, held that, as per Section 357(2), even if compensation amount is deposited the payment of amount cannot be made to the victim before the decision of the appeal and that this Court had stated that it is not always necessary to insist for the payment of compensation amount as a condition precedent for passing an order of suspension of sentence. He would however submit that without prejudice to the grounds raised the petitioner is prepared to deposit a amount of Rs.1 lakh and would pray that reasonable time may granted to deposit the same.

3. Taking into consideration of the facts of the case and without going in to the merits of the case, the order passed by the learned Sessions, Tiruchirappalli is modified and the petitioner is directed to deposit a sum of Rs.1 lakh, on or before 27.12.2018, before the learned Judicial Magistrate-III (FAC), Tiruchirappalli.

4. With the above observation, this Criminal Original Petition stands closed.

Sd/-
Assistant Registrar(co)

/True Copy/

Sub Assistant Registrar(cs-IV)

To

1. The Principal Sessions Court,
Tiruchirappalli.
2. The Judicial Magistrate Court-III (FAC),
Tiruchirappalli.
3. The Chief Judicial Magistrate, Trichy

+1cc to Mr.A. Thiruvadi Kumar Advocate in SR.No.97787

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