

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CRIMINAL PETITION No.3037 OF 2018

ORDER:

This Criminal Petition, under Section 439(1)(b) of Cr.P.C., is filed by the petitioner/accused, for modification of the condition imposed by the learned XIII Additional Metropolitan Sessions Judge, Cyberabad at L.B. Nagar, Ranga Reddy District (for short, 'the Appellate Court'), in CrI.M.P. No.6 of 2017 in Criminal Appeal No.11 of 2018, while suspending the sentence of imprisonment imposed, in C.C. No.201 of 2017, dated 04.12.2017, by the learned XII Special Magistrate, Cyberabad at Hasthinapuram, Ranga Reddy District (for short, 'the trial Court'), during pendency of the Appeal.

2. Heard the learned counsel for the petitioner, learned Public Prosecutor appearing for the respondent-State, and perused the record.

3. The petitioner was found guilty, for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881, by the trial Court and, accordingly, the petitioner was sentenced to undergo Simple Imprisonment for a period of three months and also to pay a fine of Rs.3,00,000/-, in default, to suffer simple imprisonment for one month. Aggrieved thereby, the petitioner preferred Criminal Appeal No.11 of 2018 along with CrI.M.P. No.6 of 2017 seeking suspension of the substantive sentence, during pendency of the Appeal. The Appellate Court, while suspending the substantive sentence imposed by the trial Court, directed the petitioner to deposit 25% of the compensation amount to the credit of C.C. No.201 of 2017 before the trial Court, within two months from then, and also to execute a bond for Rs.10,000/- with two sureties each for like sum to the satisfaction of the trial Court.

4. Aggrieved by the said order, the petitioner filed this Criminal Petition contending that there was no transaction between the petitioner and the respondent-complainant, therefore, no onerous condition be imposed upon the petitioner to deposit 25% of the compensation amount within two months from

then and thereby sought for modification of the order dated 09.01.2018 passed by the Appellate Court.

5. Undisputedly, the petitioner suffered conviction before the trial Court, which is now subject matter of the Appeal pending before the Appellate Court, disbelieving the contention of the petitioner that there was no transaction between the petitioner and the complainant, and as such the trial Court concluded that there is transaction between the parties and the cheque was issued towards discharge of the legally enforceable debt, it is not open for this Court, at this stage, to go into merits of the case and decide the genuineness or otherwise of the transaction. However, the Appellate Court, while suspending the sentence of imprisonment imposed by the trial Court, directed the petitioner to deposit 25% of the compensation amount, as stated *supra*, is not an onerous condition. When a petition is filed under Section 389(1) of Cr.P.C., the Court has to impose some reasonable conditions while granting stay of operation of the substantive sentence of imprisonment and as such the Appellate Court directed the petitioner to deposit 25% of the compensation amount, as stated *supra*.

6. Therefore, this Court does not find any force in the contention of the petitioner's counsel that there was no transaction between the parties and, moreover, if any finding is recorded by this Court, during pendency of the Appeal, it would be premature and beyond scope of the Petition.

7. Accordingly, with the above observation, the Criminal Petition is dismissed.

As a sequel, the miscellaneous applications, if any pending, shall stand dismissed.

M.SATYANARAYANA MURTHY, J

Date: 19.03.2018.
Dsh

HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

110



22032018

CRIMINAL PETITION No. 3037 OF 2018

Date. 19.03.2018

DSH