



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.06.2019

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P No.16519 of 2019

1.Sri Aravindar Educational Trust,
Rep. by its Authorized Signatory,
S.Nithyanandam,
Mailam Road, Sedarapet Post,
Sedarapet,
Pondicherry - 605 111.

2.S.Nityanandan

..Petitioners

Vs.

M/s.Kotak Mahindra Bank Ltd.,
Rep. by its Chief Manager,
Ponraj Thangadurai,
No.39, Ceebros Centre, 1st Floor,
Montieh Road, Egmore, Chennai - 08.

.. Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to modify the condition imposed in order dated 22.04.2019 in Crl.M.P.No.7804 of 2019 in C.A.No.167 of 2019 on the file of Principal Sessions Court, Chennai.

For Petitioner : M/s.R.Rajarajan

ORDER

This petition has been filed seeking to modify the condition imposed by the Court below, while suspending the sentence imposed by the trial Court for an offence under Section 138 of the Negotiable Instruments Act.

2. The petitioner is facing trial for an offence under Section 138 of the Negotiable Instruments Act. The trial Court by judgment dated 21.03.2019, convicted the petitioner and sentenced him to undergo ten months simple imprisonment and to pay a compensation of Rs.2 Crores with interest at 9% per annum



within one month and in default to undergo two months simple imprisonment.

3. The petitioner filed an appeal against the said judgment in CrI.A.No.167 of 2019. Along with the appeal, the petitioner also filed a petition to suspend the sentence. The Appellate Court had considered the facts and circumstances of the case and suspended the sentence by imposing a condition that the petitioner should deposit 20% compensation amount awarded by the trial Court in view of Section 148 of the Negotiable Instruments Act. This condition has been put to challenge in the present petition.

4. The learned counsel for the petitioner raised two contentions. The first contention was that the Court below has been given a discretion with regard to deposit of 20% of the compensation amount and the said discretion has not been properly exercised by the Court below. The next contention that has been urged by the learned counsel for the petitioner is that the petitioner has already paid a sum of Rs.50 lakhs to the respondent even during the pendency of the case before the trial Court. To substantiate this submission, the petitioner brought to the notice by this Court, paragraph (21) of the judgment of the Trial Court.

5. This Court has carefully considered the submissions made by the learned counsel for the petitioner and the materials placed on record.

6. Insofar as, the first contention is concerned, this Court is of the considered view that the Appellate Court has properly exercised its discretion and there is no ground to interfere with the same.

7. Insofar as the second contention is concerned, there is some force in the arguments of the learned counsel for the petitioner. The trial Court itself has found that the petitioner had paid a sum of Rs.49,80,520/- to the respondent during the pendency of the trial. This has not been taken into consideration by the Appellate Court, while imposing the condition. The Appellate Court has straight away directed 20% compensation amount to be deposited, which works out to nearly 40 lakhs.

8. In view of the above, this Court modifies the condition imposed by the Court below to the effect that the petitioner shall deposit a sum of Rs.20 lakhs to the credit of C.C.No.2750 of 2016 on the file of the Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, within a period of six weeks from the date of receipt of a copy of this order. The other condition imposed by the Court below, shall stand as it is.



9. This Criminal Original Petition is disposed of accordingly.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Sessions Court,
Chennai.

2.The Metropolitan Magistrate,
Fast Track Court No.IV,
George Town, Chennai.

+1cc to Mr.R.Rajarajan, Advocate, S.R.No.53406

Cr1.O.P No.16519 of 2019

CNR (CO)

RRS (07/08/2019)