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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

CRL.O.P.Nos.24420 and 24424 of 2019

Dr.R.Lakshmipathy

... Petitioner in Crl.O.P.No.24420 of 2019

1.Dr.R.Krishnamurthy

2.Dr.R.Lakshmipathy ... Petitioners/Accused Nos.1 & 2 in
Crl.O.P.No.24424 of 2019

Vs.

Muthamizh Mudhalvan,
Son of Senthamizh Selvan,
Inspector of Police,
Karimangalam Police Station,
Dharmapuri District.

...Respondent in both Crl.OPs.

Prayer in Crl.O.P.No.24420 of 2019: Criminal Original Petition filed under Section 482 of Cr.P.C, to set aside the return endorsement by order dated 06.09.2019 made in the Crl.M.P.S.R.No.1934 of 2019 in C.C.No.273 of 2006 on the file of Judicial Magistrate I, Krishnagiri and recall the Non Bailable Warrant issued against the petitioner.

Prayer in Crl.O.P.No.24424 of 2019: Criminal Original Petition filed under Section 482 of Cr.P.C, to set aside the return endorsement by order dated 06.09.2019 made in the Crl.M.P.S.R.No.1933 of 2019 in C.C.No.273 of 2006 on the file of Judicial Metropolitan Magistrate I, Krishnagiri and suspend the sentence imposed on the petitioners pending obtaining orders before the Appellate Court (Sessions Court).

In both the petitions

For Petitioner : Mr.I.Subramanian, Senior Counsel
for Mr.S.Elambharathi

For Respondent : Mr.R.Ganesh Kumar



C O M M O N O R D E R

Crl.O.P.No.24420 of 2019 has been filed by the accused under Section 482 Cr.P.C. seeking to set aside the return endorsement made by the Judicial Magistrate I, Krishnagiri, on 06.09.2019 in Crl.M.P.S.R.No.1934 of 2019 in C.C.No.273 of 2006 and to recall the Non Bailable Warrant issued against him.

Crl.O.P.No.24424 of 2019 has been filed by the accused Nos.1 and 2 under Section 482 Cr.P.C. seeking to set aside the return endorsement made by the Judicial Magistrate I, Krishnagiri, on 06.09.2019 in Crl.M.P.S.R.No.1933 of 2019 in C.C.No.273 of 2006.

2.Heard both sides and perused the materials available on record.

3.The learned senior counsel for the petitioners has submitted that based on the private complaint filed by the respondent herein, the Judicial Magistrate I, Krishnagiri, has taken the case on file in C.C.No.273 of 2006 for the alleged offence under Section 500 IPC and finally by the judgment dated 05.09.2019 has convicted both the petitioners herein for the offence under Section 500 IPC and sentenced to undergo two years simple imprisonment and also directed each of the petitioners to pay a sum of Rs.5,00,000/- as compensation to the respondent/complainant, in default, to undergo further three months simple imprisonment. He further submitted that since on the date of judgment, the petitioners not appeared before Court, the learned Judicial Magistrate I, Krishnagiri, has issued Non-Bailable Warrants. On the very next day that is on 06.09.2019, the accused No.2 has filed the petition under Section 70(2) Cr.P.C., to recall the said warrant and accused Nos.1 and 2 have filed the petition under Section 389(3) Cr.P.C., to suspend the sentence. The learned Judicial Magistrate has returned both the petitions stating that since the judgment was pronounced in the case on 05.09.2019 and thereafter he is not having power to entertain those applications. He further submitted that subsequently, both the petitioners have filed an appeal in C.A.No.45 of 2019 on the file of the Principal Sessions Judge, Krishnagiri and also filed a petition for suspension of sentence, but the learned Principal Sessions Judge, Krishnagiri, has returned the said petition by saying that since already this Court in Crl.O.P.Nos.24420 & 24424 of 2019 has suspended the sentence, how the said petition is maintainable before the Appellate Court. He further submitted that the Principal Sessions Judge may be directed to entertain the suspension of sentence petition and dispose of in accordance with law.



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4.Per Contra, the learned counsel for the respondent has submitted that since the judgment was passed by the learned Judicial Magistrate on 05.09.2019 and on that date, the petitioners/accused were not appeared, the learned Judicial Magistrate has rightly issued Non-Bailable Warrants. He further submitted that admittedly, the petitioners have not filed any petition to suspend the sentence on the date of judgment and only on the next day that is on 06.09.2019, the petitioners have filed petition to suspend the sentence and hence the Magistrate is not having jurisdiction to entertain the said petitions. He further submitted that the learned Judicial Magistrate has rightly returned the said petitions and hence these petitions are not maintainable under Section 482 Cr.P.C. He further submitted that this Court vide order dated 09.09.2019 has passed only an interim order stating that the warrant has to be recalled and the same cannot be taken as a final order. He further submitted that if this Court is inclined to give direction to the Appellate Court to decide the suspension petition, this Court may give direction to dispose of the said petition independently without referring to the interim order passed by this Court vide dated 09.09.2019.

5.Since the petitioners have filed appeal before the Principal Sessions Court, Krishnagiri as against the judgement of conviction and sentence passed by the learned Judicial Magistrate No.I, Krishnagiri in C.C.No.273 of 2006, these petitions have become infructuous. The petitioners are directed to represent the suspension petition before the Appellate Court within a week from the date of receipt of copy of this order and on such representation, the Appellate Court has to consider the said application and dispose of the same in accordance with law. Till then, the sentence awarded by the trial court is suspended.

6. With the aforesaid observations, these Criminal Original Petitions are disposed of.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

To

1.The Principal Sessions Judge,
Krishnagiri.



2.The Judicial Magistrate I,
Krishnagiri

3.The Public Prosecutor,
High Court, Madras.

4 .Muthamizh Mudhalvan,
Son of Senthamizh Selvan,
Inspector of Police,
Karimangalam Police Station,
Dharmapuri District.

+2cc to Mr.S.Elambharathi, Advocate sr.103633

CRL.O.P.Nos.24420 and 24424 of 2019

rsi(co)
nr 13/12/2019