

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.17093 of 2017

V.Selvaraj

.. Petitioner

vs.

N.Sadasivam

..Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, praying to set aside the Docket Order dated 23.06.2017 and direct the Appellate Court/Principal District and Sessions Judge, Tiruppur to number the Criminal Appeal in C.A.No..... of 2017 against C.C.No.126 of 2013 and take the appeal on file and to be disposed off on merits

For Petitioner : M/s.J.Franklin
For Respondent :

ORDER

This Criminal Original Petition has been filed against the Appellate Court/Principal District and Sessions Judge, Tiruppur, returning the Criminal Appeal filed by the petitioner with the direction to deposit the entire fine amount

and thereafter, file the Appeal.

2.The petitioner faced trial before the Judicial Magistrate-II, Udumalpet in C.C.No.126 of 2013, for an offence under Section 138 of the Negotiable Instruments Act. The learned Judicial Magistrate by the Judgement dated 30.05.2017, convicted the petitioner and imposed a sentence of one year simple imprisonment and a fine of Rs.5,00,000/-. The petitioner aggrieved by the said Judgement, filed a Criminal Appeal before the Appellate Court/Principal District and Sessions Judge, Tiruppur, and the learned Sessions Judge by an endorsement dated 26.03.2017 returned the papers directing the petitioner to deposit the entire fine amount and file the appeal along with the receipt for the deposit of the fine amount.

3.The learned counsel for the petitioner would submit that the learned Appellate Court/Principal District and Sessions Judge cannot impose such a onerous condition against the petitioner in order to prosecute a statutory right of appeal provided under the Code of Criminal Procedure. The learned counsel for the petitioner submitted that the Court below while imposing the sentence has in fact directed this amount to be treated as compensation to be paid to the complainant. Therefore, the learned counsel would submit that imposing such a condition even at the threshold is illegal and the same defeats the statutory right given to the accused person.

4.This Court finds force in the submissions made by the learned counsel for the petitioner. The Court below ought not to have imposed a condition even for the purpose of entertaining the appeal. The Criminal Appeal is a statutory right given to the accused person and the same cannot be defeated by imposing such a onerous condition. The appellate Court after entertaining the Criminal Appeal and while considering the petition for suspension of sentence, could have applied its mind with regard to imposing any conditions against the petitioner. Without doing so, the appellate Court has straight away imposed a condition of directing the petitioner to deposit a sum of Rs.5,00,000/- in order to even entertain an appeal. Therefore, the order returning the papers requires interference by this Court. The Judgement of the Trial Court was on 30.05.2017. It is more than 1 ½ years since the Judgement has been passed and by now, a Non Bailable Warrant must also to be pending against this petitioner.

5.Taking into consideration the facts and circumstances of the case, the petitioner is directed to deposit a sum of Rs.1,50,000/- (Rupees one lakh fifty thousand only) before the Trial Court in C.C.No.126 of 2013 and along with the receipt for deposit, the petitioner is directed to re-present the appeal papers before the Appellate Court/Principal District and Sessions Judge, Tiruppur, within a period of two weeks from the date of receipt of a copy of this order. On such re-presentation, the learned Appellate Court/Principal District and Sessions

Judge, Tiruppur, is directed to entertain the appeal and proceed further in accordance with law.

6.This Criminal Original Petition is allowed with the above directions.

07.01.2019

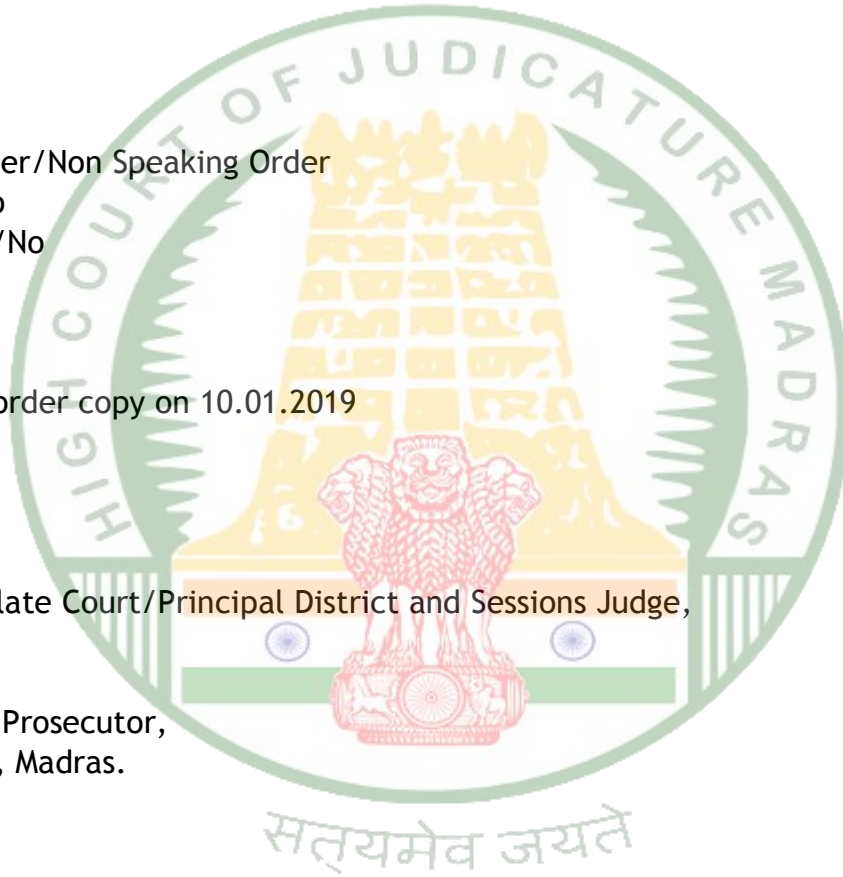
Speaking Order/Non Speaking Order
Index:Yes/No
Internet:Yes/No

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Note : Issue order copy on 10.01.2019

To

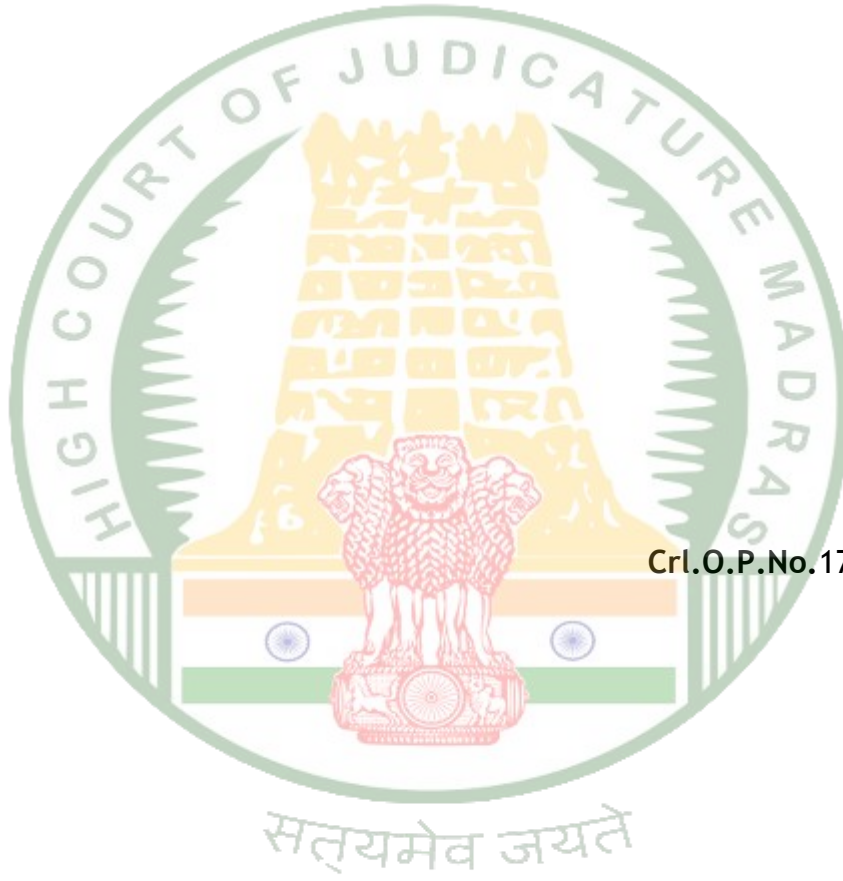
1. The Appellate Court/Principal District and Sessions Judge, Tiruppur.
- 2.The Public Prosecutor, High Court, Madras.



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N.ANAND VENKATESH, J.

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