



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	14.03.2018
Date of Order	12.06.2018

CORAM

THE HONOURABLE MRS. JUSTICE T.KRISHNAVALLICrI.R.C (MD) No.38 of 2019andCrI.MP (MD) No.1229 of 2019

Sasikala

: Revision Petitioner/
Petitioner/Appellant

Vs.

N.Chandrababu

: Respondent/Respondent/
Respondent

Prayer: Criminal Revision has been filed under Sections 397 and 401 of Criminal Procedure Code against the order made in Cr.M.P.No.1 of 2019 in C.A.No.9 of 2019, dated 10.01.2019 on the file of the Principal Sessions Judge, Trichy.

For Revision Petitioner

: Mr.M.Suresh

For Respondent

: No appearance

O R D E R

This Criminal Revision is directed against the order made in Cr.M.P.No.1 of 2019 in C.A.No.9 of 2019, dated 10.01.2019 on the file of the Principal Sessions Judge, Trichy.

2.It is seen from the records that the petitioner was convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for two years and to pay a compensation of Rs.40,00,000/-, in default to undergo 6 months of simple imprisonment. The sentence is suspended till the disposal of the appeal on condition that he has to deposit a sum of Rs.4,00,000/- before the trial court on or before 27.01.2019 and on executing a bond for Rs.10,000/- with two sureties each for a like to the satisfaction of the Judicial Magistrate No.V, Tiruchirappalli. The said order is challenged in this criminal revision.

3.The learned counsel appearing for the petitioner submitted that the learned Judge ought not to have imposed the condition, while suspending the sentence by directing the petitioner to deposit the amount and the petitioner is having a right of appeal and an onerous condition to suspend the sentence cannot be ordered and that the appellate court ought to have granted interim protection without requiring deposit of amount. In view of the above circumstances,



the impugned order has to be set aside and the criminal revision has to be allowed.

4. There is no representation for the respondent, in spite of giving opportunity to argue the same.

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5. It is mainly argued on the side of the revision petitioner/accused that while suspending the sentence, the court has no power to impose condition and the petitioner is having right of appeal. In support of his contention, he relied upon the following judgments:-

(i) 1985 CRL.L.J 1857 (Keshab Narayan Banerjee and another Vs. The State of Bihar);

(ii) (2004)13 SCC 457 (Sheikh Ayub Vs. State of M.P); and

(iii) 2011-1-LW (Crl.) 464 (C. Murugesan Vs. Prabakaran)

6. In the decision reported in **1985 CRI.L.J 1857 (Keshab Narayan Vs. State of Bihar)**, it has been held as follows:-

"Heard counsel for the parties. The condition imposed by the High Court for enlarging Keshab Narayan Banerjee, appellant No.1 on bail, namely, that he should furnish security for rupees one lakh in cash or in fixed deposit of any nationalised bank in Bihar with two sureties residing in the State of Bihar each for a like amount appears to be excessively onerous. In the circumstances of this case, it virtually amounts to denial of bail itself. It is, therefore, ordered that the appellant No.1 shall be enlarged on bail on his furnishing a bail bond for Rs.25,000/- with two sureties each for the like amount to the satisfaction of the learned Special Judge."

7. In the decision reported in **(2004)13 Supreme Court Case 457 (Sheikh Ayub Vs. State of M.P)**, it has been held as follows:-

"3. the impugned order the appellant was granted bail and directed to deposit Rs.2,50,000 which is alleged to be the amount misappropriated by the appellant. There was also condition for furnishing surety bond for Rs.50,000. In the circumstances of the case, direction to deposit Rs.2,50,000 was not warranted, as per the conditions for granting bail."

4. Hence, the direction of deposit Rs.2,50,000



is deleted and subject to this modification the order passed by the learned Single Judge granting bail is confirmed."

8. On coming to the instant case on hand, the revision petitioner/accused preferred C.A.No.9 of 2019 and also preferred an application in Cr.M.P.No.1 of 2019 seeking to suspend the sentence till the disposal of the appeal.

9. Perusal of Section 357(2) Cr.P.C. indicates that even if the compensation amount is deposited, the payment cannot be made to the victim before the decision of the appeal. In such a case, this Court is of the view that it is not always necessary to insist for the payment of compensation amount as condition precedent for passing an order of suspension of sentence. The order of directing payment of compensation amount by the Trial Court is also a subject matter of appeal being right of the accused.

10. For the above said reasons, the condition imposed by the Principal Sessions Judge, Trichy to deposit Rs.4,00,000/- alone is liable to be set aside.

11. In the result, this Criminal Revision is **partly allowed**. The condition imposed by the Principal Sessions Judge, Trichy on the petitioner to deposit a sum of Rs.4,00,000/- before the trial court on or before 27.01.2019 alone is set aside. In other aspects, the order of the learned Judge shall remain unaltered. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

To,

The Principal Sessions Judge,
Trichy.

+1 CC to Mr.M.SURESH, Advocate SR-68290.

**Judgment made in
Crl.R.C(MD)No.38 of 2019
12.06.2019**

CS(21.08.2019) 3P 3C