

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.05.2020

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.7984 of 2020

S.S.Syed, M/41 Years

S/o. Sytha

No.6/204, Santhaipettai Pudur,

Poiyerikarai, Paramathy Road,

Namakkal Town,

Namakkal.

...Petitioner/Accused

Vs.

N.Nalliyannan

S/o.Marappa Gounder

Door NO.2/202, Senkapalli,

Ellaimedu,

Palappati,

Paramathy Velur Taluk,

Namakkal District.

...Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Produce Code to call for the records and set aside the docket endorsement dated 26.02.2020 in unnumbered C.M.P.No.--- of 2020 in Crl.A.No.64 of 2019 on the file of the Principal District and Sessions Judge, Namakkal and further direct the Principal District and Sessions Judge, Namakkal to take the above application afresh.

For Petitioner : Mr.N.Ponraj

ORDER

(The case has been heard through video conference)

The petitioner has been filed to call for the records and set aside the docket endorsement dated 26.02.2020 in unnumbered C.M.P.No.--- of 2020 in Crl.A.No.64 of 2019 on the file of the Principal District and Sessions Judge, Namakkal and further direct the Principal District and Sessions Judge, Namakkal to take the above application afresh.

2. The brief facts; The petitioner was found guilty for offence under Section 138 of the N.I. Act and convicted and sentenced to undergo six months imprisonment and directed to pay compensation of Rs.8,00,000/- and in default, to undergo one month rigorous imprisonment by the learned Judicial Magistrate, Namakkal in C.C.No.249 of 2014 dated 23.10.2019. Against the said conviction and sentence, the

petitioner filed an appeal in CrI.A.No.64 of 2019 on the file of the learned Principal District and Sessions Judge, Namakkal and the appellate Court by order dated 27.11.2019 in C.M.P. No.1935 of 2019 was pleased to suspend the sentences on condition that the petitioner has to deposit 20% of the compensation amount of Rs.8,00,000/- within sixty days and further to furnish two sureties for Rs.10,000/- each. After coming out on bail since, the petitioner did not pay the amount within the specified time, the petitioner was arrested on 01.02.2020 pursuant to the warrant issued by the learned Judicial Magistrate and he is now in custody. Subsequently, the petitioner had filed an application for bail in CrI.M.P.--- of 2020 in the above appeal No.64 of 2019 before the Principal District Judge, Namakkal. Whereas, the learned Judge has returned the same stating that the petition is not maintainable. The present petition has been filed seeking to set aside the docket order of return and to take the application for bail on file and pass orders.

3. The learned Counsel for the petitioner would submit that the order of the learned Judicial Magistrate-I, Namakkal, made in C.C.No.249 of 2014 dated 25.10.2019, was suspended by the appellate Court by order dated 27.11.2019 in C.M.P.No.1935 of 2019 in C.A.No.64 of 2019 with a direction to deposit 20% of the compensation amount i.e. Rs.1,60,000/- within a period of 60 days. Due to inability to raise funds, the petitioner was not able to deposit the amount within a period of 60 days, and thereby he was arrested on 01.02.2020, pursuant to the warrant issued by the learned Judicial Magistrate and now he is in custody. The learned Counsel would further submit that the petitioner is now prepared to deposit the amount and comply with the condition imposed by the appellate Court in C.M.P.No.1935 of 2019 dated 27.11.2019. He further submitted that the appeal is still pending and that as per Section 389 Cr.P.C., the petition for suspension is maintainable and the petitioner is entitled to be heard on merits. He further submitted that if the petition is not numbered and if the sentence is not suspended, the petitioner will be put to untold suffering and hardship. He further submitted that prior to filing of the appeal, the petitioner was in custody for about 25 days and thereafter, from 01.02.2020, the petitioner is in custody for more than 140 days. Whereas, the learned judge has returned the petition as not maintainable. He would further submit that since the appeal is pending, the application is maintainable and thereby would seek to set aside the order of return and number the application.

4. Heard the learned Counsel and perused the materials available on record.

5. It is seen that originally the petitioner was granted suspension of sentence and since he has not complied with the conditional order, he has been re-arrested and is in custody from 01.02.2020. The appeal in CrI.A.No.64 of 2019 is

still pending.

6. This Court is of the opinion, during the pendency of the appeal, the application for suspension of sentence and bail is maintainable. It is seen that the petition has been filed under Section 439 Cr.P.C. The petitioner is directed to re-present the petition by amending the provision as under Section 389 Cr.P.C. and the learned Principal District and Sessions Judge, Namakkal, is directed to number the petition and pass orders on merits in accordance with law.

7. With the above direction, this Criminal Original Petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

ksa-2/kmm

To

The Principal District and Sessions Judge,  
Namakkal.

Cr1.O.P.No.7984 of 2020

MR (CO)  
GN (22/07/2020)

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