



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Monday, the Thirteenth day of July Two Thousand and Twenty

PRESENT

The Hon'ble Mrs.Justice R.THARANI

CRL MP(MD) No.1246 of 2020

IN

CRL RC(MD) No.146 of 2020

M.PON

... PETITIONER/APPELLANT/
ACCUSED

Vs

FATHIMA

... RESPONDENT/RESPONDENT/
COMPLAINANT

Prayer in CRL MP(MD) . 1246/ 2020 :

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to pass an order to suspend the conviction in relation to payment of compensation as made in C.A.No.76/2014 passed by the Hon'ble Additional District and Sessions Judge (Fast Track) Kanyakumari District at Nagercoil dated 29.11.2019 pending disposal of the above Criminal Revision Petition before this Hon'ble Court and thus render justice.

Prayer in CRL RC(MD) . 146/ 2020 :

To pass an order revising the order of the conviction and sentence imposed on the Petitioner by means of a judgment dated 29.11.2019 passed by the Hon'ble Additional District and Sessions Judge (Fast Track) Kanyakumari District at Nagercoil made in C.A.No.76 of 2014 of modifying the conviction and sentenced as imposed on the petitioner by means of a judgement dated 12.11.2014 passed by the Hon'ble District Munsif cum Judicial Magistrate, Boothapandi, Kanyakumari District made in S.T.C.No.695 of 2013 forthwith and thus render justice.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.S.PALANI VELAYUTHAM, Advocate for the petitioner and of MR.M.SURI, Advocate on behalf of the Respondent, the court made the following order:-

<https://hcservices.ecourts.gov.in/hcservices/>



Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2. The case against the petitioner is that the petitioner borrowed a sum of Rs.50,000/- as loan on 01.04.2011 and executed a post dated cheque on 09.06.2011 and the same was presented on 09.06.2011 and it was returned as 'there is no sufficient balance'. Therefore, the mandatory notice was issued as against the petitioner on 23.06.2011 and the same was refused by him. Hence, the respondent filed a private complaint against the petitioner for the offence under Section 138 of Negotiable Instrument Act, 1981, before the learned District Munsif cum Judicial Magistrate, Boothapandi, Kanyakumari District. After investigation, a charge sheet was filed and the petitioner was convicted by the learned District Munsif cum Judicial Magistrate, Boothapandi, Kanyakumari District, directed the petitioner to pay a sum of Rs.55,000/- as fine and in default to undergo 3 months simple imprisonment in S.T.C.No.695 of 2013, dated 12.11.2014.

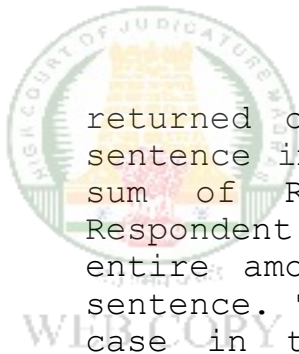
3. As against the said conviction and sentence, the petitioner has preferred an Appeal in C.A.No.76 of 2014 before the learned Additional District and Sessions Judge (Fast Track) Kanyakumari District at Nagercoil and after hearing the case, the said appeal was modified by the learned Judge as the petitioner should pay a sum of Rs.5,000/- as fine and Rs.50,000/- as compensation and in default to undergo three months simple imprisonment. Aggrieved over the same, the petitioner preferred this Criminal Revision petition along with a suspension of sentence application.

4. On the side of the petitioner, it is stated that the petitioner was convicted for the offence under Section 138 of Negotiable Instrument Act and the sentence was modified by the First Appellate Court. The petitioner was sentenced to pay a compensation of Rs.50,000/- and to pay a fine of Rs.5,000/- and it is stated that the petitioner is having valuable points for the revision and to prove his bonafied, the petitioner is ready to deposit a sum of Rs.25,000/- and hence, he prays that the sentence may be suspended.

5. On the side of the respondent, it is stated that the prayer of the petitioner is for suspension of conviction, which is not maintainable. Only sentence can be suspended and not the conviction. Due to Covid-19, the petitioner cannot deposit the aforesaid amount before the Trial Court. He further submits that until the petitioner deposits the entire amount, the suspension of sentence should be given and pray that the petitioner may be directed to deposit the entire amount into the bank account of the respondent.

6. Records perused.

<https://hcservices.ecourts.gov.in/hcservices/> The records, it is revealed that the cheque was



returned on 09.06.2011. The First Appellate Court modified the sentence imposed by the Lower Court as the petitioner should pay a sum of Rs.50,000/- as compensation and Rs.5,000/- as fine. Respondent side insists that until the petitioner deposits the entire amount, the petitioner is not entitled for suspension of sentence. To give an opportunity to the petitioner to put forth his case in the revision, the sentence alone is suspended on the following condition;

(i) the petitioner is directed to deposit a sum of **Rs.25,000/- (Rupees Twenty Thousand Only)** before the learned District Munsif cum Judicial Magistrate, Boothapandi, Kanyakumari District within a period of **one month** from the date of receipt of a copy of this order.

(ii) the petitioner executing a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties each for a like sum, of whom, one should be a blood relative to the satisfaction of the learned District Munsif cum Judicial Magistrate, Boothapandi, Kanyakumari District.

(iii) the sureties shall affix their photographs and Left Thumb Impression along with their signature in the surety bond and the learned Trial Judge may obtain a copy of their Aadhar Card or Voter I.D to ensure their identity;

(iv) the petitioner shall appear before the said Court on all working days at 10.30a.m until further orders.

sd/-
13/07/2020

/ TRUE COPY /

/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.



TO

1. THE ADDITIONAL DISTRICT AND
SESSIONS JUDGE (FAST TRACK),
KANYAKUMARI DISTRICT AT NAGERCOIL.
2. THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
BOOTHAPANDI,
KANYAKUMARI DISTRICT.
3. DO THROUGH
THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMARI DISTRICT.

ORDER

IN

CRL MP(MD) No.1246 of 2020 IN

CRL RC(MD) No.146 of 2020

Date :13/07/2020

DSS

SRS/ VR/ SAR-III/ 16.07.2020/ 4P/4C