



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2020

CORAM:

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

Crl.O.P. (MD) .No.6858 of 2020

Kaveri Manian

... Petitioner

Vs.

State represented by
The Inspector of Police,
Kovilpatti East Police Station,
Kovilpatti,
Thoothukudi District.
(Crime No.35 of 2013)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., to set aside the order passed in unnumbered Cr.M.P.No. of 2020 in C.A.No.7 of 2019 on the file of the Principal Sessions Court, Thoothukudi dated 08.01.2020 and direct the Principal Sessions Court to number and dispose the same within a stipulated time fixed by this Court and to suspend the sentence imposed as against the petitioner in order in S.C.No.180 of 2014 on the file of the Assistant Sessions Court, Kovilpatti, dated 18.01.2019 as against the petitioner/accused No.1.

For Petitioner : Mr.R.Manimaran

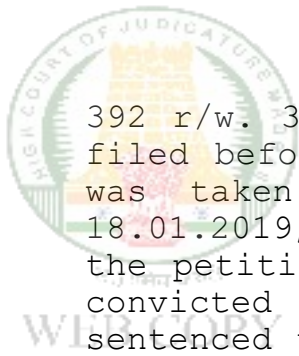
For Respondent : Mr.K.K.Ramakrishnan
Additional Public Prosecutor

O R D E R

The Criminal Original Petition has been filed to quash the order passed by the Principal Sessions Court, Thoothukudi in unnumbered Cr.M.P.No. of 2020 in C.A.No.7 of 2019, dated 08.01.2020 and to direct the learned Principal Sessions Judge to number and dispose the same within a stipulated time.

2. Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor takes notice for the respondent.

3. The petitioner is the first accused in Crime No.35 of 2013 and he has been charged with for the offences under Sections



392 r/w. 397 of I.P.C. After investigation, final report has been filed before the Assistant Sessions Court, Kovilpatti and the same was taken cognizance in S.C.No.180 of 2014. After trial, on 18.01.2019, the Assistant Sessions Judge, Kovilpatti, has acquitted the petitioner/A1 for the offence under Section 397 of I.P.C., and convicted him for the offence under Section 392 of I.P.C., and sentenced to undergo 5 years rigorous imprisonment with the fine of Rs.1,000/-, in default to undergo 1 month simple imprisonment. As against the order of conviction, the petitioner has preferred an appeal before the Principal Sessions Court, Tuticorin in C.A.No.7 of 2019 and the same is pending. Pending the appeal, the petitioner moved an application for suspending the sentence imposed by the trial Court in Cr.M.P.No.570 of 2019. But the same was dismissed by the appellate Court, on 16.04.2019.

4. The learned counsel for the petitioner would submit that the petitioner is undergoing imprisonment from 18.01.2019 and after a lapse of time, he moved another application for suspending the sentence. However, the second application filed for suspending the sentence was returned by the learned Principal Sessions Judge, Tuticorin, with an endorsement that *"Already Suspension of Sentence Petition filed and dismissed on 16.04.2019. Hence, this petition is returned as not maintainable."* The petitioner is undergoing imprisonment pursuant to the conviction in S.C.No.180 of 2014.

5. There is no specific bar under Section 389(1) Cr.P.C. for filing a second application for suspending the sentence. The statute does not prohibit the convict prisoner from filing any application to suspend the sentence pending the trial. Even if the earlier application for suspending the sentence was dismissed, the petitioner is entitled to renew his application with the change of circumstances, if any. In fact, the Hon'ble Supreme Court, as early as in the year 1978, in the case of **Babu Singh v. State of U.P.**, reported in **(1978) 1 SCC 579**, has held as follows:

"2. Briefly we will state the facts pertinent to the present petition and prayer and proceed thereafter to ratiocinate on the relevant criteria in considering the interlocutory relief of bail. Right at the beginning, we must mention that, at an earlier stage, their application for bail was rejected by this Court on September 7, 1977. But an order refusing an application for bail does not necessarily preclude another, on a later occasion, giving more materials, further developments and different considerations. While we surely must set store by this circumstance, we cannot accede to the faint plea that we are barred from second consideration at a later stage. An interim direction is not a conclusive adjudication, and updated reconsideration is not over-turning an earlier negation. In this view, we entertain the application and evaluate the merits pro and con."



6. The Sessions Court ought to have entertained the application and decide the same, on its own merits and also considering the change of circumstances. Returning the application, without even numbering the second application, is not proper and therefore, the impugned docket order of the learned Principal Sessions Judge, Tuticorin, dated 08.01.2020 is set aside. The petitioner is permitted to file a fresh application to suspend the sentence, if he so advised and if any application is filed, the learned Principal Sessions Judge, Tuticorin, shall consider the same on its own merit and in accordance with law.

7. In the result, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

akv/gk

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 Principal Sessions Judge,
Thoothukudi.
- 2.The Inspector of Police,
Kovilpatti East Police Station,
Kovilpatti,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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