

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.6312 of 2021

Amsha

... Petitioner

Versus

S.Ponmudi

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the Docket Order passed by the learned Principal District and Sessions Judge, Krishnagiri dated 03.03.2021 and direct the learned Judge to restore the Crl.M.P.No.340/2021 and the appeal.

For Petitioner : Mr.Sunder Mohan

ORDER

The petitioner was convicted under Section 138 of the Negotiable Instruments Act and sentenced to undergo one year Simple Imprisonment and to pay compensation of Rs.10,00,000/- to the respondent, in default to undergo one months Simple Imprisonment by the learned Judicial Magistrate, Fast Track Court, Hosur, by judgment, dated 28.12.2020 in S.T.C.No.168 of 2016. Against which, the petitioner preferred an appeal before the learned Principal District and Sessions Judge, Krishnagiri along with the petition to suspend the sentence under Section 389(i) Cr.P.C. The appeal was not numbered, on the other hand, Crl.M.P.No.340 of 2021 was assigned for the suspension of sentence petition. Thereafter, a memo was filed that on 04.02.2021, the petitioner has deposited 20% of the compensation amount i.e., Rs.2,00,000/- before the learned Principal District and Sessions Judge, Krishnagiri and produced the receipt to that effect. Thereafter, the case was listed on 15.02.2021 before the learned Principal District and Sessions Judge, Krishnagiri and the petitioner was granted suspension of sentence and ordered the petitioner to execute a bond for sum of Rs.10,000/- with two sureties on or before 02.03.2021 and list the case on 03.03.2021. Thereafter, the petitioner has executed the sureties before the trial Court on 22.02.2021 and subsequently, the case was listed on 03.03.2021 before the learned Principal District and Sessions Judge, Krishnagiri. On that day, since

the petitioner as well as her counsel were unable to appear due to some constraints, the learned Principal District and Sessions Judge, Krishnagiri without verifying and giving opportunity, had straight away dismissed the suspension of sentence petition for default. Not only stopped with that. On 09.03.2021, the learned Principal District and Sessions Judge, Krishnagiri returned the appeal memorandum and made the endorsement as follows:-

"Returned

Suspension of Sentence petition is dismissed for default. Hence, this appeal memorandum is returned."

2.Challenging the same, the order, dated 03.03.2021 in CrI.M.P.No.340 of 2021, the petitioner has filed the above petition.

3.The appeal is a statutory appeal. The lower appellate Court (the Principal District and Sessions Judge, Krishnagiri ought not to have returned the appeal on technical ground. On perusal of the records, this Court finds that numbering the Criminal Miscellaneous Petition without taking the appeal on file is not proper. It is to be seen that the petitioner had executed the sureties before the trial Court as per the order dated 15.02.2021 and also deposited the amount of Rs.2,00,000/- on 04.02.2021 and filed the memo on 15.02.2021. Hence, the lower appellate Court has no authority to dismiss the suspension of sentence and also return the appeal memorandum.

4.In view of the above, this Court set asides the orders, dated 03.03.2021 and 08.03.2021 passed by the learned Principal District and Sessions Judge, Krishnagiri and directs the learned Principal District and Sessions Judge, Krishnagiri to take the appeal on file, number it and dispose of the same on merits in accordance with law. This Criminal Original Petition is, accordingly, allowed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Principal District and Sessions Judge,
Krishnagiri.

2.The Judicial Magistrate,
Fast Track Court,
Hosur.

3.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr. Sunder Mohan, Advocate Sr.No. 21811

CRL.O.P.No.6312 of 2021

SS (CO)
RMP (08/04/2021)



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