

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.01.2021

CORAM

THE HON'BLE MR. JUSTICE N.ANAND VENKATESH

Cr1.O.P.No.19391 of 2020

1.M/s.Pinnacle Impex,
rep. by its partner, Gokul,
No.38, Kothukkarandupudur,
R.N.Pudur Post,
Erode 638 005.

2.Gokul,

3.Aravind Kumar ... Petitioners/Appellants

Vs.

S.Senthilrajan ... Respondent/Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C. to set aside the order dated 11.11.2020 made in Cr1.M.P.No.1280 of 2020 in C.A.No.39 of 2020 on the file of the Principal Sessions Judge, Tirupur, by appreciating the facts and circumstances.

For Petitioners : Mr.M.Guruprasad

For Respondent : No appearance.

O R D E R

This petition has been filed challenging the order passed by the Court below dismissing the petition filed by the petitioners seeking for suspension of sentence.

2.The petitioners underwent trial for an offence under Section 138 of Negotiable Instruments Act. The trial Court convicted and sentenced the petitioners through judgment dated 07.10.2020. The petitioners had sought for Suspension of Sentence before the trial Court in CMP.No.1808 of 2020 and the trial Court suspended the sentence till 06.11.2020.

3.The petitioners filed an appeal before the Principal Sessions Court, Tirupur, on 04.11.2020 and the Appeal and Suspension of Sentence petitions were numbered on 05.11.2020 and the Suspension of Sentence petition came up for hearing on 11.11.2020. The Appellate Court dismissed the application as not maintainable only on the ground that the trial Court had suspended the sentence only till 06.11.2020 and the period has already expired. Aggrieved by the same, the present petition has been filed before this Court.

4.Heard Mr.M.Guruprasad, learned counsel appearing on behalf of the petitioner.

5.In the considered view of this Court, the Appellate Court had an independent power to consider the Suspension of Sentence petition under Section 389 Cr.P.C and the Appellate Court ought to have considered the petition independently on its own merits. Admittedly, the petitioners had filed the Criminal Appeal and Suspension of Sentence petition on time and it was taken up for hearing only on 11.11.2020. That by itself does not make the Suspension of Sentence petition not maintainable and the Court below had erroneously dismissed the application as not maintainable. The same requires the interference of this Court.

6.In the result, the order passed by the Court below in CrI.M.P.No.1280 of 2020 dated 11.11.2020 is hereby set aside. The matter is remanded back to the Principal Sessions Judge, Tiruppur, and there shall be a direction to the learned Principal Sessions Judge, Tirupur, to consider the Suspension of Sentence petition on its own merits in exercise of its power under Section 389 Cr.P.C. This process shall be undertaken immediately and orders shall be passed.

7.This Criminal Original Petition is accordingly allowed with the above directions.
06.01.2021

सत्यमेव जयते

-sd-

Assistant Registrar

//True copy//

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Sub Assistant Registrar

To

The Principal Session Judge,
Tiruppur.

+ 1 cc To Mr.M.Guruprasad, Advocate SR.NO.992

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