

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.12.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.19155 of 2021

T.Mathiyalagan

...Petitioner

Versus

STATE: by Inspector of Police,
Inspector of Police,
District Crime Branch,
Crime No.16 of 2021,
Perambalur.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to direct the Learned Judicial Magistrate No.I, Perambalur to accept the surrender and recall the non-bailable warrant issued on the date of judgment in C.C.No.122 of 2002 on the Court of the Judicial Magistrate No.I, Perambalur dated 22.09.2021 in Crime No.16 of 2021 on the file of the respondent and enable the petitioner to file a petition under Section 389(3) of the Code of Criminal Procedure to suspend the sentence.

For Petitioner : Mr.R.John Sathyan for
Mr.T.Seenivasan

For Respondent : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to direct the learned Judicial Magistrate No.I, Perambalur to accept the surrender and recall the Non-Bailable Warrant issued on the date of judgment in C.C.No.122 of 2002, dated 22.09.2021 and enable the petitioner to file a petition under Section 389(3) Cr.P.C., to suspend the sentence.

2.The petitioner/A2 was convicted, by the learned Judicial Magistrate No.I, Perambalur, vide judgment dated 22.09.2021 in C.C.No.122 of 2002 and sentenced to undergo Simple Imprisonment for the period of one year and shall pay a fine of Rs.10,000/-, in default, to undergo two months Simple Imprisonment, for offence under Section 420 r/w 34 IPC. On the date of judgment (22.09.2021), the petitioner was unable to appear before the trial Court due to health ailments. Thereafter, the petitioner filed an appeal in C.A.No.16 of 2021 before the learned

Principal District and Sessions Judge, Perambalur (lower appellate Court) and also filed CrI.M.P.No.1139 of 2021 in C.A.No.16 of 2021 for suspension of sentence. Though the petition for suspension of sentence has been taken up for hearing, it was not considered for the reason that the petitioner did not appear before the trial Court on the date of judgment and did not receive the copy of the judgment personally. Thereafter, the petitioner has filed this petition and when the matter was taken up for hearing, this Court informed the petitioner to appear before the lower appellate Court and file a petition seeking exemption for surrender on the ground that the petitioner's conviction is only for one year and he was suffering from health ailments on the date of passing of judgment. In view of the same, the petitioner had approached the lower appellate Court and filed a petition for exemption for surrender, which was not entertained and returned. Hence, he filed Criminal Miscellaneous Petition for exemption before this Court in S.R.No.38120.

3.The learned Additional Public Prosecutor appearing for the respondent Police submitted that the petitioner has got no previous antecedents and he has to surrender before the lower appellate Court for bail.

4.Considering the submissions on both sides, the petitioner was convicted, by the learned Judicial Magistrate No.I, Perambalur vide judgment dated 22.09.2021 in C.C.No.122 of 2002 and sentenced to undergo Simple Imprisonment for the period of one year and shall pay a fine of Rs.10,000/-, in default to undergo two months Simple Imprisonment for offence under Section 420 r/w 34 IPC. The reason given by the petitioner for not appearing for the trial Court on the date of passing judgment, is acceptable.

5.In view of the above, this Court directs the lower appellate Court to entertain the petition filed for suspension of sentence in CrI.M.P.No.1139 of 2021 in C.A.No.16 of 2021 on the date of appearance of the petitioner.

6.With the above directions, this Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

To

1. The Principal District and Sessions Judge,
Perambalur.
2. The Judicial Magistrate No.I,
Perambalur.
3. The Chief Judicial Magistrate,
Perambalur. (For Information)
4. The Inspector of Police,
District Crime Branch,
Perambalur.
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.T.Seenivasan, Advocate, S.R.No.65931

CRL.O.P.No.19155 of 2021

EV(CO)
RGA(03/01/2022)