



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.22071 of 2021

and

CrI.M.P.No.11984 of 2021

S.Padmanaban

...Petitioner

Vs.

C.Subramaniam

...Respondent

PRAYER: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure to set aside the order dated 01.11.2021 in CMP.No.1879 of 2021 in C.A.No.98 of 2021 on the file of the Principal Session Judge at Tiruppur and to direct the Hon'ble Principal Session Judge at Tiruppur to suspend the sentence, till disposal of C.A.No.98 of 2021.

For Petitioner : Mr.K.Myilsamy

ORDER

The petitioner, who is the accused in C.C.No.160 of 2016 for offence under Section 138 of the Negotiable Instruments Act, which was filed by the respondent/complainant, was convicted by the Judicial Magistrate, Fast Track Court at Magisterial Level, Tiruppur, by judgement dated 05.10.2021, against which, the petitioner filed an appeal in C.A.No.98 of 2021 and also filed suspension of sentence petition in Cr.M.P.No.1879 of 2021 before the Principal Sessions Judge, Tirupur and the Principal Sessions Judge, Tirupur, by an order dated 01.11.2021, finding that the petitioner was not present before the trial Court at the time of pronouncement of judgment, issued a non bailable warrant and the same is pending. In view of the same, the lower appellate Court was not inclined to suspend the sentence.

2.The gist of the case is that on 21.05.2014, for the business purpose, Rs.13,00,000/- was taken as loan from the respondent/complainant by the petitioner. In discharge of the said liability, the petitioner executed a promissory note and cheque for a sum of Rs.13,00,000/-. On 05.10.2015, the cheque



was deposited in State Bank of Thiruvangoor, Tiruppur Branch, in the account of the respondent/complainant. The said cheque was returned on 06.10.2015 for the reasons that "funds insufficient". Thereafter, statutory notice issued on 31.10.2015, which was received by the petitioner/accused on 02.11.2015 and a reply was sent on 01.12.2015 with some allegations, which was not acceptable and thereafter, the case was filed. During trial, the complainant was examined himself as PW1 and Exs.P1 to P6 have been marked. The complainant PW1 was cross examined by the accused. Finally, the trial Court convicted the accused and sentenced him to undergo six months simple imprisonment and directed the accused to pay a sum of Rs.13,00,000/- as compensation to the respondent/complainant.

3.The contention of the learned counsel for the petitioner/accused is that the respondent /complainant has got no source of income to lend a sum of Rs.13,00,000/- as loan and he had not produced any document to show that he has got resources to lend the money as loan. He further submitted that the petitioner took a loan of Rs.1.5 lakhs from one Rajasekar, for which, the petitioner signed a blank cheque and pronote, which handed over to the said Rajasekar. The said Rajasekar had handed over the cheque and pronote to the respondent /complainant, who filled up the same and made a claim, the petitioner falsely implicated in this case. Further, the respondent/complainant filed a case before the Judicial Magistrate Court No.II, Peermedu, Kerala, in STS No.393 of 2016. The competent Court in Kerala finding that the complainant has got no means to lend the money as loan and hence, dismissed the complaint on merits.

4.The petitioner earlier filed a 311Cr.P.C. petition before the trial Court seeking to recall PW1 and to mark certain documents and also to draw the attention of PW1 about the Kerala case. The trial Court dismissed the same, not entertained 311 Cr.P.C. petition and immediately, rendered the judgment. He further submitted that the trial Court, in its judgement, had not discussed these facts and merely, proceeded to invoke Section 139 of NI Act, finding that the petitioner not dislodged the initial presumption, the petitioner has got a strong case in appeal. The trial Court dismissed the suspension of sentence petition on the ground that NBW is pending against the petitioner and the petitioner not appeared to receive the judgment. Further, being a summons case, judgment can be rendered even in absence of the accused. Hence, the appearance of the accused is not imperative, by his absence, he has not stalled the proceedings of the trial.



5.Considering the submissions and on perusal of the materials, it is seen that the petitioner in his reply admitted that he had taken loan of Rs.1.5 lakhs from Rajasekar and his contention is that the blank cheque had been filed up and this matter to be decided only in the appeal. As per Section 143A Cr.P.C., 20% of the amount to be paid as compensation to the complainant.

6.In view of the same, the petitioner is directed to deposit 20% of the cheque amount of Rs.13,00,000/- i.e. Rs.2,60,000/- to the credit of C.C.No.160 of 2016 before the trial Court. The respondent complainant can withdraw the deposited amount by filing an affidavit subject to outcome of the appeal.

7.With the above direction, the sentence of six months imprisonment imposed on the petitioner is hereby suspended. Accordingly, the criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sms
To

1.The Principal Sessions Judge,
Tiruppur.

2. The Judicial Magistrate
Fast Track Court at Magistrate Level
Tiruppur

+1 CC to Mr.K.Myilsamy, Advocate sr 63359.

Cr1.O.P.No.22071 of 2021
and
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CP(CO)
SP(03/01/2022)