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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NOS.24543 & 24553 OF 2021

Pandaribai

... Petitioner in Crl.O.P.No.24543 of 2021

Kanthan

... Petitioner in Crl.O.P.No.24553 of 2021

Versus

State Represented by,
The Inspector of Police,
Chit and Prohibition of Exorbitant Interest Zone,
Central Crime Branch,
Vepery, Chennai.
Crime No.54/2015.

... Respondent in both cases

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Code of Criminal Procedure, to modify the condition in Crl.M.P.Nos.5347 & 5348 of 2021 in C.A.Nos.91 & 92 of 2021 on the file of the Principal District & Sessions Judge, Thiruvallur in respect of the condition i.e., "to deposit 20% of the compensation amount before the trial Court to the credit of C.C.No.111/2016 within period of one month. In default of deposit of the compensation amount, the order passed will stand cancelled automatically".

For Petitioner
in Crl.O.P.No.24543 of 2021 : Mr.P.Suresh Babu

For Petitioner
in Crl.O.P.No.24553 of 2021 : Mr.A.V.Rakesh

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



COMMON ORDER

Criminal Original Petitions have been filed to modify the condition in CrI.M.P.Nos.5347 & 5348 of 2021 in C.A.Nos.91 & 92 of 2021 imposed by the learned Principal District and Sessions Judge, Thiruvallur that "the petitioners to deposit 20% of the compensation amount before the trial Court to the credit of C.C.No.111 of 2016, within period of one month. In default of deposit of the compensation amount, the order passed will stand cancelled automatically".

2.The petitioners were convicted by the learned Judicial Magistrate No.I, Poonamallee, (trial Court) by judgment, dated 01.11.2021 in C.C.No.111 of 2016. For offence under Section 406 IPC, the petitioners sentenced to undergo two years Rigorous Imprisonment and for offence under Section 420 IPC, the petitioners sentenced to undergo two years Rigorous Imprisonment and to pay a sum of Rs.49,94,400/- (Rupees forty nine lakhs ninety four thousand and four hundred only), in default of payment, to undergo simple imprisonment for five months. As against the judgment of the trial Court, dated 01.11.2021, the petitioners preferred appeals before the learned Principal District and Sessions Judge, Thiruvallur (lower appellate Court) in C.A.Nos.91 & 92 of 2021 and also filed petitions for suspension of sentence in CrI.M.P.Nos.5347 & 5348 of 2021 in C.A.Nos.91 & 92 of 2021. The lower appellate Court, by order, dated 03.12.2021 admitted the appeals and in CrI.M.P.Nos.5347 & 5348 of 2021 in C.A.Nos.91 & 92 of 2021, directed the petitioners to deposit 20% of the compensation amount to the credit of C.C.No.111 of 2016 each before the trial Court, within a period of one month, against which, the present Criminal Original Petitions have been filed.

3.The learned counsel for the petitioners submitted that the condition imposed by the lower appellate Court is an onerous one. The petitioners were on bail during investigation and trial. The learned counsel further submitted that the trial Court suspended the sentence of the petitioners till filing of the appeal. The petitioners have valid grounds in succeeding the appeals. The deposit of 20% of the compensation amount would prejudice the appeals before the lower appellate Court and great prejudice would be caused. The trial Court merely on surmises and conjectures, had convicted the petitioners without properly analyzing the evidence and materials during trial. The petitioners are got no resources to make such huge amount of 20% of Rs.49,94,4000/-. The lower appellate Court directed the petitioners to deposit 20% of the compensation amount each, which works out to 40% of the compensation amount and it is exorbitant. If the petitioners failed to deposit such huge



amount, their suspension of sentence would automatically stand cancelled. Hence, the condition of the lower appellate Court is onerous one and he prays for modification of the condition imposed by the lower appellate Court.

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4.The learned Additional Public Prosecutor appearing for the respondent strongly objected these petitions that the petitioners by running unregistered chit, collected huge sums of money in the name of Deepavali fund and thereby, cheated several persons. During trial, PW1 to PW17 examined, who are the victims lost their money. They have clearly deposed that the petitioners by conducting unregistered chit, cheated them. Thus, the petitioners collected huge sums of money from the victims in a deceitful manner, concealed the amount and got benefited. The amount ordered to be deposited by the petitioners, is only to the benefit of the victims, who have lost their hard-earned money. Hence, he strongly objected for modification of the condition imposed by the lower appellate Court.

5.This Court has considered the rival submissions and perused the materials available on record.

6.The petitioners were convicted by the learned Judicial Magistrate No.I, Poonamallee, (trial Court) by judgment, dated 01.11.2021 in C.C.No.111 of 2016. Now, the appeals filed by the petitioners are admitted by the lower appellate Court in C.A.Nos.91 & 92 of 2021. It is a statutory appeal. It is seen that the petitioners were on bail during investigation and trial. After convicting the petitioners, the trial Court had suspended the sentence of the petitioners till filing of the appeals before the lower appellate Court. The lower appellate Court suspended the sentence of the petitioners with a condition to deposit of 20% of the compensation amount to the credit of C.C.No.111 of 2016, which is an onerous condition.

7.Considering the submissions made by the parties, this Court is inclined to modify the compensation amount alone.

8.The condition of the lower appellate Court, by order, dated 03.12.2021 directing the petitioners to deposit 20% of the compensation amount is modified to the effect that the petitioners to deposit Rs.5,00,000/- each (totally Rs.10,00,000/-) on or before 17.02.2022 to the credit of C.C.No.111 of 2016, on the file of Judicial Magistrate Court No.I, Poonamallee, by way of fixed deposit in a nationalized bank for a minimum period of one year, which is renewable.



9.The petitioners to appear before the lower appellate Court on 05.01.2022 and file a memo to that effect. It is made clear that no extension of time would be granted under any circumstances. In case of default of payment by the petitioners, the respondent Police to take custody of the petitioners since there would be no suspension of sentence/bail in force.

10.The trial Court is directed to transmit the entire case records in C.C.No.111 of 2016 to the file of the Principal District and Sessions Court, Thiruvallur, who shall hear the appeals and dispose the same, without delay, preferably within a period of six months.

11.With the above directions, both Criminal Original Petitions are disposed of.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District and Sessions Court,
Thiruvallur.
2. The Inspector of Police,
Chit and Prohibition of Exorbitant Interest Zone,
Central Crime Branch,
Vepery, Chennai.
3. The Judicial Magistrate No.1,
Poonamallee, chennai.
4. -do- through The Chief Judicial Magistrate,
Chennai.
5. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Suresh Babu, Advocate, S.R.No.67549

+1cc to Mr.A.V.Rakesh, Advocate, S.R.No.67550

CRL.O.P.Nos.24543 & 24553 of 2021

SSI (CO)

RLP (07/01/2022)