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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.2249 of 2022

P.Suresh

... Petitioner

Vs.

K.Gopinathan

... Respondent

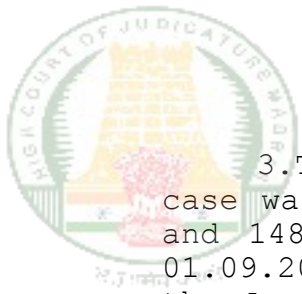
PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to set aside the order dated 20.12.2021 passed by the learned Principal District and Sessions Judge, Tiruvallur in Crl.M.P.No.2448 of 2021 in C.A.No.45 of 2021.

For Petitioner : Mr.V.Paarthiban

O R D E R

This Criminal Original Petition has been filed to set aside the order dated 20.12.2021 passed by the learned Principal District and Sessions Judge, Tiruvallur in Crl.M.P.No.2448 of 2021 in C.A.No.45 of 2021.

2.The petitioner is an accused in S.T.C.No.326 of 2017, who was convicted by the trial Court for offence under Sections 138 of Negotiable Instruments Act. The trial Court by Judgment dated 19.04.2021 found the petitioner guilty and sentenced him to undergo six months Rigorous Imprisonment and to pay a compensation of Rs.10,40,000/- under Section 357(3) Cr.P.C. Aggrieved against the same, the petitioner filed an appeal before the Principal District and Sessions Court, Thiruvallur in C.A.No.45 of 2021. Further filed a Crl.M.P.No.2448 of 2021 seeking suspension of sentence. The learned Principal District and Sessions Judge by order dated 20.12.2021, suspended the sentence of the petitioner till the disposal of the said C.A.No.45 of 2021, on condition that the petitioner to deposit 20% of the compensation amount to the credit of S.T.C.No.326 of 2017, within a period of one month. In default of deposit of the compensation amount, the order passed will stand cancelled.



3.The petitioner's contention is that the cheque in this case was issued in the year 2016. The amendment to section 143 and 148 of the Negotiable Instruments Act came into force on 01.09.2018. In view of the same the Appellate Court ordering the Appellant to deposit such sum which shall be a minimum of twenty percent of the fine or compensation awarded by the trial court, may not be proper.

4.In support of his contention he relied upon the citation of the Hon'ble Supreme Court in the case of G.J.Raja vs. Tej Raj Surana in Criminal Appeal No. 1160 of 2019 @ SLP(Crl.)No.3342 of 2019

5.He would also fairly submit that subsequently the Apex Court in the case of Surender Singh Deswal @ Col. S.S. Deswal & Others Vs. Virender Gandhi and another in CRIMINAL APPEAL NOS.1936-1963 OF 2019, had held a contra view that the amendment brought in is retrospective. He further submitted that in the amendment brought in under Section 148(2), the compensation amount to be deposited within a period of 60 days from the date of order. Further it can be extended for 30 days for sufficient cause. In this case, the trial Court had not imposed any fine, it had imposed only the payment of compensation amount. The Sessions Court in its order had granted only 30 days time, which is not proper. As per the act, it is 60 days + 30 days = 90 days. The petitioner may be permitted to deposit the amount of Rs.2,08,000/- being the 20% of the compensation amount of Rs.10,40,000/- to be deposited in the credit of S.T.C.No.326 of 2018, within a period of 90 days. It is necessitated for the reason that according to the petitioner he had disputed the liability, further due to the current pandemic situation he is unable to mobilize such a huge amount.

6.In view of the same, this Court grants 90 days time to the petitioner to deposit 20% of the compensation amount from the date of receipt of this order and the compensation amount to be deposited before the trial Court before the expiry of 90 days or after normal functioning of the Court, whichever is later.

7.Accordingly, this Criminal Original Petitions stands allowed.

Sd/-
Assistant Registrar(CS-V)

//True copy//

Sub Assistant Registrar

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To

1. The Principal District and Sessions Judge,
Tiruvallur.
2. The IV Additional District and Sessions Judge,
Ponneri.
3. The Judicial Magistrate, Thiruvothiyur

+1cc to Mr.V.Parthiban, Advocate SR.No.6546

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JPII (CO)
GMY (22/02/2022)