

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.NO.18728 OF 2020

K.S.Venkatesh

... Petitioner

.Vs.

M.Velu

... Respondent

PRAYER:-

Criminal Original Petition is filed under Section 389(3) of the Code of Criminal Procedure, to set aside the condition Nos.2, 4 and 5 imposed in the order of suspension of sentence dated 28.01.2020 made in C.M.P.No.140 of 2020 in C.A.No.15 of 2020 passed by the learned Principal Sessions Judge, Namakkal.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.C.Ramaraj
For Mr.M.Guruprasad

O R D E R

This Criminal Original Petition has been filed to challenge the order of suspension of sentence dated 28.01.2020 in CMP.No.140 of 2020 in C.A. No.15 of 2020 passed by the learned Principal Sessions Judge, Namakkal and thereby imposed the condition that the petitioner shall deposit 20% of the compensation amount before the Trial Court within a period of 60 days for the offence punishable under Section 138 of the Negotiable Instruments Act.

2. The learned counsel for the petitioner would submit that the respondent lodged the complaint for the offence punishable under Section 138 of the Negotiable Instruments Act in STC. No.12 of 2017 on 23.05.2016. The Trial Court convicted the petitioner and sentenced him to undergo imprisonment for a period of six months and also directed him to pay a compensation of Rs.4,51,600/- by the judgment dated 10.12.2019.

3. Aggrieved by the same, the petitioner preferred an appeal in C.A.No.15 of 2020 and also filed CMP.No.140 of 2020 for suspension of sentence. The Trial Court suspended the sentence on condition to the petitioner to deposit 20% of the compensation amount within a period of 60 days as per Section 148 of the Negotiable Instruments Act.

4. The learned counsel for the petitioner would further submit that the provisions of Section 148 of the N.I. Act has to be applied prospectively with respect to the offence committed after insertion of Section 148 of the Act said on 01.09.2018. The amended provision is prospective in nature and confined to the cases where offences were committed after the introduction of the amendment namely on 01.09.2018, in the case of G.J. Raja dated 30.07.2019 in C.A. No.1160 of 2019. Whereas the Hon'ble Supreme Court of India, in the case of Surinder Singh Deswal @ Col.S.S.Deswal and others Vs. Virender Gandhi dated 29.05.2019 reported in 2019 11 SCC 341 has held that,

"8.1 Having observed and found that because of the delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings, the object and purpose of the enactment of Section 138 of the N.I. Act was being frustrated, the Parliament has thought it fit to amend Section 148 of the N.I. Act, by which the first appellate Court, in an appeal challenging the order of conviction under Section 138 of the N.I. Act, is conferred with the power to direct the convicted accused - appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court. By the amendment in Section 148 of the N.I. Act, it cannot be said that any vested right of appeal of the accused - appellant has been taken away and/or affected. Therefore, submission on behalf of the appellants that amendment in Section 148 of the N.I. Act shall not be made applicable retrospectively and more particularly with respect to cases/complaints filed prior to 1.9.2018 shall not be applicable has no substance and cannot be accepted, as by amendment in Section 148 of the N.I. Act, no substantive right of appeal has been taken away and/or affected. Therefore the decisions of this Court in the cases of Garikapatti Veeraya (supra) and Videocon International Limited (supra), relied upon by the learned Senior counsel appearing on behalf of the appellants shall not be applicable to the facts of the case on hand. Therefore, considering the Statement of Objects and Reasons of

the amendment in Section 148 of the N.I. Act stated hereinabove, on purposive interpretation of Section 148 of the N.I. Act as amended, we are of the opinion that Section 148 of the N.I. Act as amended, shall be applicable in respect of the appeals against the order of conviction and sentence for the offence under Section 138 of the N.I. Act, even in a case where the criminal complaints for the offence under Section 138 of the N.I. Act were filed prior to amendment Act No.20/2018 i.e., prior to 01.09.2018. If such a purposive interpretation is not adopted, in that case, the object and purpose of amendment in Section 148 of the N.I. Act would be frustrated. Therefore, as such, no error has been committed by the learned first appellate court directing the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court considering Section 148 of the N.I. Act, as amended."

The order of the Hon'ble Supreme Court of India has categorically held that Section 148 of the N.I. Act as amended, shall be applicable in respect of the appeals against the order of conviction and sentence for the offence under Section 138 of the N.I. Act, even in a case where the criminal complaints for the offence under Section 138 of the N.I. Act were filed prior to amendment Act No.20/2018 i.e., prior to 01.09.2018.

5. Considering the above facts and circumstances of the case, the Appellate Court, while suspending the sentence of the petitioner has rightly imposed the condition. Therefore, this Court does not find any infirmity or illegality in the order passed by the trial Court and hence, the same is liable to be dismissed. Accordingly, this Criminal Original Petition is dismissed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

drl

To

The Principal Sessions Judge,
Namakkal.

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.37872
+1cc to Mr.N.Manokaran, Advocate, S.R.No.37994

CRL.O.P.NO.18728 OF 2020

GPL(CO)
PBS/19/07/2022