



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23/02/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.16349 of 2019

and

Crl.MP(MD)No.9733 of 2019

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Sanmuganathan

: Petitioner/Single Accused

Vs.

Murugesan

: Respondent/Complainant

Prayer: Criminal Original Petitions have is filed under Section 482 Cr.P.C., to set aside the condition imposed in Cr.M.P No.1716 of 2019 in C.A No.57 of 2019 dated 23/07/2019 on the file of the Principal District and Sessions Juge, Sivagangai, payment of 20% of cheque amount before the Judicial Magistrate, Fast Track Court, Karaikudi.

For Petitioner : Mr.N.Mohideedn Basha

For Respondent : No appearance

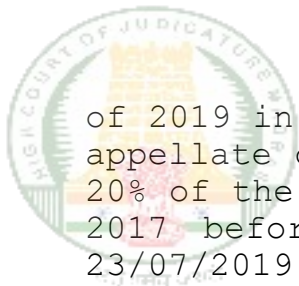
O R D E R

This petition has been filed seeking in order to set aside the order, that was passed by the appellate court in Cr.M.P No.1716 of 2019 in C.A No.57 of 2019, dated 23/07/2019.

2.In the above said order, the appellate court has passed a conditional order by making the petitioner to deposit 20% of the cheque amount. Seeking to set aside the above said order, this petition came to be filed.

3.Heard both sides.

4.A simple point of legal issue that has been raised by the petitioner is that he was convicted and sentenced to undergo one year simple imprisonment and to pay a fine of Rs.10,60,000/- by the trial court namely the Judicial Magistrate/Fast Track Court, Karaikudi, in C.C No.50 of 2017, dated 10/08/2018. Against the above said conviction and sentence, he preferred C.A No.57 of 2019 before the Principal District and Sessions Judge, Sivagangai. During the above said proceedings, he has filed a petition under section 389(3) Cr.P.C to suspend the sentence, which was ordered in Crl.M.P No.1716



of 2019 in C.A No.57 of 2019, by which suspending the sentence, the appellate court has imposed condition upon the petitioner to deposit 20% of the cheque amount to the credit of the above said CC No.50 of 2017 before the concerned Magistrate court. The order is dated 23/07/2019. Thereafter, it was extended till 04/09/2019.

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5.Challenging the above said portion of the order, this petition is filed on the sole ground that as per the case of the prosecution, the date of the alleged transaction took place much before the amendment of sections 143 and 148 of the Negotiable Instruments Act,2002.

6.According to the petitioner, it has no retrospective operation, as has been held by the Hon'ble Supreme Court in the case of L.G.R Enterprises Vs. P.Anbazhagan (2019(3) MLJ (Crl) 423. That case was decided on 30/07/2019. In that case, the retrospective operation of 143-A was under discussion. By an Amendment Act 20 of 2014, section 143(A) as well as 148 has been introduced with effect from 01/09/2018. By the side of discussing the retrospective operation of section 143(A), the Hon'ble Supreme Court has also went into section 148. In Surinder Singh Deswal and others Vs. Virender Gandhi (2019-8-SCALE 445) is direct on that point. The Hon'ble Supreme court in the above said judgment was of the view that section 148 of Negotiable Instruments Act is retrospective in operation. Whether the same analogy can be extended to section 143 (A) was under discussion. The Hon'ble Supreme Court has stated that section 143(A) can only be the prospective in nature, but section 148 is concerned, it is retrospective in nature. The reason being that already the guilt of the accused has been proved before the trial court, but whereas in section 143(A), there is no such proof of guilt. This judgment cited by the petitioner in L.G.R Enterprises, represented by its Proprietric Sindh @ Lakshmi Vs. P.Anbazhagan (2019)3 MLJ (Crl)423, was decided on 12th July 2019.

7.According to the learned counsel appearing for the petitioner, what applies to the principles in section 143(A) equally applies to section 148 of the Act also. But as mentioned earlier, the Hon'ble Supreme Court has clarified the position stating that sections 143(A) and 148 are operating in different fields.

8.The next argument advanced by the learned counsel appearing for the petitioner is that even though discretion has been given by the appellate court under section 148 of the Act, the reason for imposing such a condition is not stated in the order.

9.I am unable to accept the view of the learned counsel appearing for the petitioner, simply because the discretion has been given by the appellate court. In law, the petitioner cannot expect that the discretion must be exercised in his favour. Only on going through the records, such an order has been passed by the appellate court. Absolutely, I find no merit in this petition and the



impugned order that has been passed by the appellate court requires no interference.

10. In the result, this criminal original petition stands **dismissed**. Consequently, connected Miscellaneous Petitions are closed.

11. After passing the order, the learned counsel appearing for the petitioner would submit that the petitioner is the aged person, so on that ground, he wants to dispense with his personal appearance before the concerned trial court.

12. The said request is considered. Considering the profession of the petitioner, his personal appearance is dispensed with. Within 15 days from the date of receipt of a copy of this order, the petitioner must appear before the trial court and file an undertaking affidavit that he will appear as and when required by the court, the attested photograph must be attached in the affidavit and he must ensure that he is properly represented by an Advocate.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Principal District and Sessions Judge, Sivagangai

2. The Judicial Magistrate, Fast Track Court, Karaikudi.

Crl.O.P. (MD)No.16349 of 2019
23/02/2022

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