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Crl.R.C.No.439 of 20__



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V. SIVAGNANAM

Crl.R.C.No.439 of 2023
and Crl.M.P.No.3291 of 2023

Abirami

.. Petitioner

Vs.

B.Mohanabai

.. Respondent

PRAYER: Criminal Revision case filed under Sections 397 and 401 of Cr.P.C., praying to set aside the order passed by the Additional District and Sessions Court (FTC), Kanchipuram dated 23.12.2022 in Crl.A.No.1 of 2022 and in order dated 14.12.2021 in C.C.No.84 of 2019, on the file of the Judicial Magistrate No.I at Kanchipuram.

For Petitioner : Mr.R.Anbalagan

ORDER

Challenging the order passed by the Additional District and Sessions Court (FTC), Kanchipuram on 23.12.2022 in Crl.A.No.1 of 2022 and in order



dated 14.12.2021 in C.C.No.84 of 2019, on the file of the Judicial Magistrate No.I at Kanchipuram, the present Criminal Revision has been filed.

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2. The learned counsel for the petitioner submitted that the petitioner is an accused in C.C.No.84 of 2019 on the file of Judicial Magistrate No.I, Kanchipuram and the respondent who is the complainant, filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against the petitioner. After trial, she was convicted and sentenced to undergo simple imprisonment for one year and to pay compensation of Rs.9,00,000/- to the complainant. Against which, the petitioner filed an appeal in Crl.A.No.1 of 2022 before the Additional District Court (FTC), Kanchipuram. In the meanwhile, the petitioner filed Crl.M.P.No.70 of 2022 to suspend the sentence before the Additional District and Sessions Judge, (FTC), Kanchipuram and the learned Judge ordered the petition on 01.02.2022 on condition that the petitioner shall deposit 20% of the compensation amount awarded by the trial Court within a period of 60 days. Since she has not complied that order, she seeks further time to comply with the order in Crl.M.P.No.70 of 2022 in Crl.A.No.1 of 2022 that was dismissed and subsequently suspension of sentence was cancelled on 29.04.2022. Against which, the petitioner filed Crl.R.C.No.757 of 2022 before this Court and this Court by



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order dated 21.06.2022 extended further time for complying conditional order for a period of two weeks from the date of receipt of a copy of this order.

3. The learned counsel for the petitioner submitted that the learned Sessions Judge, without considering the case on merits, for the non compliance of the condition imposed in CMP No.70 of 2022, dismissed the appeal. Against which, the present revision has been filed. He further submitted that the reason for non compliance of condition is that the petitioner's mother died and hence he was not able to raise 20% of the fine amount.

4. Heard the submissions of the learned counsel for the petitioner and perused the materials available on record.

5. On perusal of the records, the fact reveals that the petitioner is an accused in C.C.No.84 of 2019. The respondent filed a complaint against him for the offence under Section 138 of Negotiable Instrument Act. After trial, he was convicted and sentenced to undergo simple imprisonment for one year



and to pay compensation of Rs.9.00,000/- to the complainant. Aggrieved against the same, he filed an appeal in C.A.No.1 of 2022 before the Additional District Court (FTC), Kanchipuram. While considering the suspension of sentence in the Crl.M.P.No.70 of 2022, the learned Judge ordered to pay 20% of the fine amount. Aggrieved over the same, he filed the present revision before this Court. In the revision, this Court vide order dated 01.02.2022 in Crl.M.P.No.70 of 2022 in Crl.A.No.1 of 2022 directed to comply the condition and extended the time for compliance for two weeks. Even thereafter, the petitioner has not complied the condition. In such circumstances, the learned Trial Judge dismissed the criminal appeal, for non-compliance of the condition imposed while suspending the sentence, without deciding the case on merits. Considering the nature of the offence and also considering the fact that the petitioner was unable to deposit the amount as directed by the lower appellate court in Crl.M.P.No.70 of 2022 due to the death of her mother, this Court is inclined to set aside the impugned order .

6. In the result, the impugned order dated 23.12.2022 in Crl.A.No.1 of 2022 passed by the Additional District and Sessions Court (FTC), Kanchipuram is hereby set-aside. This Criminal Revision Case is allowed



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and **two weeks** time is granted to the petitioner for complying with the condition imposed in Crl.M.P.70 of 2022, dated 29.04.2022. On such compliance, the lower Appellate Court is hereby directed to restore the Criminal Appeal and dispose the same on merits and in accordance with law within a period of **three months** from the date of receipt of a copy of this order. Consequently, the connected Crl.M.P.No.3291 of 2023 is closed.

07.03.2023

Index: yes/no
Internet: yes/no
rna

Note: Issue Order copy on 17.03.2023

To

1. The Additional District and Sessions Court (FTC), Kanchipuram.
2. The Judicial Magistrate No.I, Kanchipuram.



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V. SIVAGNANAM, J.

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