



Crl.R.C.No.2146 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.2146 of 2023

and

Crl.M.P.No.19453 of 2023

K.Singaram

... Petitioner/Accused

Vs.

G.Kannan

... Respondent

PRAYER: Criminal Revision Case has been filed under Sections 397 and 401 of Code of Criminal Procedure, praying to call for the records in Criminal Appeal No.3 of 2022 on the file of Principal District Judge, Salem and set aside the judgment dated 22.03.2022.

For Petitioner : Mr.R.Asokan

For Respondent : Mr.J.Ramakrishnan

ORDER

This petition has been filed challenging the judgment passed by the learned Principal Sessions Judge, Salem in Crl.A.No.3 of 2022 dated 22.03.2022.



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2.The contention of the petitioner is that the petitioner was convicted by the Trial Court in STC No.465 of 2018 dated 23.12.2021 for offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo six months simple imprisonment and to pay the cheque amount of Rs.4,00,000/- as compensation. Aggreived against the same, the petitioner filed an appeal in Crl.A.No.3 of 2022 before the learned Principal Sessions Judge, Salem. Thereafter, the petitioner filed a petition in C.M.P.No.438 of 2022 seeking suspension of sentence. The Lower Appellate Court by order dated 28.01.2022, suspended the sentence with a condition to deposit 20% of the cheque amount by the petitioner to the credit of STC No.465 of 2018. Thereafter, the petitioner filed an extension petition in C.M.P.No.628 of 2022 before the learned Principal Sessions Judge, Salem. The learned Sessions judge by order dated 11.02.2022, granted fifteen days time to deposit 20% of the cheque/compensation amount. On 18.02.2022, the petitioner deposited a sum of Rs.80,000/- (20% of the cheque amount) before the learned District



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Munsif-cum-Judicial Magistrate, Vazhapadi. A scanned reproduction of the same reads as follows:

AS Per order in cmp 628/2022
cmp 438/2022 (in) c.o. 3/2022
Honble Principal Sessions Judge
Salem.
Crl.Misc.61-A.H.C.R.P. Cr.104/Feb-2022
FOIL
No. STC 465/2018
301046
(Form of receipt to be granted by the Court)
IN THE COURT OF THE DISTRICT MUNISIF CUM
JUDICIAL MAGISTRATE
VAZHAPADI.
Received this 18 day of 20 2 - 2022
from Singaram
son of Karuppaia Konar. the
sum of Rs. 80,000/- Rupees Eighty
thousand only.
the whole/part of the
Rs. 80,000/-
85
18/2/22
DISTRICT MUNISIF CUM
JUDICIAL MAGISTRATE
VAZHAPADI.
18/2/2022

2.1. Thereafter, the appeal in Crl.A.No.3 of 2022 was listed for hearing on 22.03.2022. At that time, the petitioner met with an accident, immediately rushed to the hospital and he was not in a position to contact his



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counsel to inform about the same. In the meanwhile, the case was called for hearing, the Lower Appellate Court finding that neither the appellant nor his counsel was present, dismissed the appeal for non prosecution.

3.The learned counsel for petitioner submitted that it is the statutory appeal and the appeal cannot be dismissed summarily on technical grounds. As per Section 381 of Cr.P.C., an appeal to the Court of Sessions shall be heard by the Sessions Judge, the appellant has to be given opportunity of hearings and the appeal to be heard on merits. In this case, the same has not been followed. Further, as per Section 386 of Cr.P.C., the hearing of the appellant is mandatory. In this case, the appeal was dismissed on technical grounds without hearing the appellant. Hence, prayed for setting aside the order dated 22.03.2022.

4.The learned counsel for the respondent submits that he has no objection to hear the appeal on merits. His only contention is that the cheque



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is of the year 2018 and it is almost six years. The respondent/complainant is yet to see the colour of the coin. Though the petitioner had deposited 20% of the cheque amount, he is yet to receive the same. He further sought some condition to be imposed. In view of the same, the petitioner is directed to deposit another sum of Rs.50,000/- to the credit of STC No.465 of 2018 within a period of two weeks from the date of receipt of a copy of this order.

5.In view of the above, the judgment passed by the learned Principal Sessions Judge, Salem in Crl.A.No.3 of 2022 dated 22.03.2022 is hereby set aside and the appeal is restored on the file of Principal Sessions Court, Salem.

6.Before the Trial Court, in the credit of STC No.465 of 2018, there will be an amount of Rs.80,000/-, which was already deposited on 18.02.2022 and Rs.50,000/-, which the petitioner is now directed to be deposited. The respondent/complainant is permitted withdraw the amount of Rs.1,30,000/- (Rs.80,000/- + Rs.50,000/-) by filing appropriate petition



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before the concerned court without issuing notice to the petitioner. The only caveat is, he has to file an undertaking that the amount received by him is subject to the out come of the appeal in Crl.A.No.3 of 2022.

7.It is made clear that in any event the petitioner failing to comply with the order, the Lower Appellate Court is free to take coercive action, secure the appellant and thereafter proceed with the appeal.

8.With the above observations and directions, the Criminal Revision Case is allowed. Consequently, connected Criminal Miscellaneous petition is closed.

19.12.2023

Index : Yes/No

Speaking order / Non-speaking order

Neutral Citation : Yes/No

rsi



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To

- 1.The Principal Sessions Judge,
Salem.
- 2.The District Munsif-cum-Judicial Magistrate,
Vazhapadi.
- 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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