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Crl.R.C.No.2028 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.2028 of 2023

R.Alagesan

... Petitioner

Vs.

V.Rajeshwari

... Respondent

PRAYER: Criminal Revision Case has been filed under Sections 397 and 401 of Cr.P.C, praying to call for the records in Crl.M.P.No.28286/2023 in Crl.A.No.643/2023 on the file of the Principal Judge, City Civil Court, Chennai and examine the correctness, legality or propriety of the findings and set aside the order dated 06.11.2023 by revising the same.

For Petitioner : Mr.V.Jayakumar

ORDER

This petition has been filed to set aside the order passed by the learned Principal Judge, City Civil Court, Chennai in Crl.M.P.No.28286 of 2023 in Crl.A.No.643 of 2023 dated 06.11.2023.



Crl.R.C.No.2028 of 2023

WEB COPY

2. The petitioner, who is the accused in a case filed under Section 138 of the Negotiable Instruments Act by the respondent in C.C.No.4845 of 2019, was convicted by the Trial Court by judgment dated 21.09.2023. Aggrieved by the same, the petitioner preferred an appeal before the Sessions Court in C.A.No.643 of 2023 and suspension of sentence petition under Section 389(1) of Cr.P.C. in Crl.M.P.No.28286 of 2023. The Principal Sessions Judge, City Civil Court, Chennai by order dated 06.11.2023 dismissed the petition on the ground that the Lower Court issued conviction warrant against the petitioner/accused on 25.10.2023 and the warrant is pending against the accused. Aggreived against the same, the present revision has been filed.

3.The learned counsel for the petitioner submitted that the Lower Court though had rendered a judgment of conviction against the petitioner on 21.09.2023, by mistake in the first page of the judgment, it has been wrongly



Crl.R.C.No.2028 of 2023

typed as 11.09.2023. Thereafter, the petitioner filed a petition under Section 362 of Cr.P.C. before the Lower Court and the same is corrected. He further submitted that on the date of his conviction, i.e., on 21.09.2023, the petitioner filed a petition under Section 389(3) Cr.P.C. seeking suspension of sentence and the Trial Court in the judgment recorded the same and suspended the sentence of the petitioner giving 30 days time to the petitioner to prefer an appeal. The petitioner filed an appeal before the Sessions Court along with suspension of sentence petition on 18.10.2023, which was returned and later resubmitted on 19.10.2023.

3.1.In the first suspension of sentence petition in Crl.M.P.No.27514 of 2023, the Principal Sessions Judge found that in the first page of the judgment the date is mentioned as 11.09.2023 and hence, 30 days is over and the Trial Court would have issued conviction warrant and hence, dismissed the petition. Thereafter the petitioner pointing out the typographical error on the date in the judgment filed another petition in



Crl.R.C.No.2028 of 2023

Crl.M.P.No.28286 of 2023. Again the same was dismissed for the reason that

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the trial Court would have issued a conviction warrant on 25.10.2023.

According to the petitioner, this may not be proper for the simple reason that

the trial Court in Crl.M.P.No.42095 of 2023 dated 21.09.2023 had suspended

the sentence and granted 30 days time. This 30 days would get over only on

20.10.2023. Further from 21.10.2023 to 29.10.2023 all the Courts were

closed for Dussehra holidays and the petitioner would have a benefit of

Section 471 Cr.P.C. These facts have not been considered by the Principal

Sessions Judge, Chennai. He further submitted that now appeal in

C.A.No.643 of 2023 was made over to XVI Additional Sessions Judge, City

Civil Court, Chennai.

3.2.The learned counsel for petitioner fairly submitted that the

practise in the Sessions Court is 20% of the cheque amount is normally

deposited as a condition for suspending the sentence, which the petitioner is

ready and has got no objection to deposit the same. In this case, the cheque



Crl.R.C.No.2028 of 2023

WEB COPY

amount is Rs.10,00,000/- and the 20% would be around Rs.2,00,000/- which the petitionenr is ready to deposit.

4.Considering the submissions made and on a perusal of the material it is seen that the Trial Court rendered a judgment of conviction on 21.09.2023. The petitioner was given 30 days time in Crl.M.P.No.42095 of 2023 dated 21.09.2023. The 30 days is getting over on 20.10.2023 and admittedly the appeal and suspension of sentence petitions have been filed on 19.10.2023, which was recorded in the impugned order. Hence, it has been filed within the period of limitation. From 21.10.2023 to 29.10.2023, the Courts were closed for Dussehra holidays. Hence, benefit of Section 471 Cr.P.C. is to be extended to the petitioner.

5.In view of the same, the order passed by the learned Principal Sessions Judge, City Civil Court, Chennai in Crl.M.P.No.28286 of 2023 dated 06.11.2023 is set aside. The learned XVI Additional Sessions Judge,



Crl.R.C.No.2028 of 2023

City Civil Court, Chennai is directed to grant suspension of sentence to the petitioner by directing the petitioner to deposit 20% of the cheque amount with usual conditions. The petitioner is directed to appear before the Lower Court to file an appropriate petition along with proof of deposit of 20% of the cheque amount Rs.10,00,000/-, i.e., Rs.2,00,000/- within a period of 15 days from the date of receipt of a copy of this order.

6.With the above directions, the Criminal Revision Case is allowed.

30.11.2023

Index : Yes/No

Internet : Yes/No

Speaking order / Non-speaking order
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Note: Issue order copy on 11.12.2023.



Crl.R.C.No.2028 of 2023

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To

- 1.The Principal Sessions Judge,
City Civil Court, Chennai.
- 2.The XVI Additional Sessions Judge,
City Civil Court, Chennai.
- 3.The Public Prosecutor,
High Court, Madras.



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Crl.R.C.No.2028 of 2023

M.NIRMAL KUMAR, J.

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Crl.R.C.No.2028 of 2023

30.11.2023