



Crl.O.P.(MD).No. 1554 of 2023

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.01.2023

CORAM:

THE HONOURABLE MR. JUSTICE A.D. JAGADISH CHANDIRA

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Saravanan

...Petitioner/Appellant/Accused

Vs.

Manimaran

...Respondent/Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to set aside the docket order made by the learned Principal District and Sessions Judge, Thanjavur dated 07.01.2023 and further direct the learned Principal District and Sessions Judge, Thanjavur to number the un-numbered Criminal Appeal filing No.7597 of 2022 in the matter of appeal against the judgment and conviction imposed in S.T.C.No.124 of 2020 on the file of the learned Judicial Magistrate, Fast Track Court at Magistrial Level, Thanjavur dated 29.11.2022 and to direct the Appellate Court to take the criminal appeal in the matter along with the suspension of sentence application and consider on merits in accordance with law.

For Petitioner

: Mr.R.L.Dhilipan Pandian

For Respondent

: Mr.G.Madhavan

Government Advocate (Crl. side)



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ORDER

This Criminal Original Petition has been filed to set aside the docket order made by the learned Principal District and Sessions Judge, Thanjavur dated 07.01.2023 and further to direct the learned Principal District and Sessions Judge, Thanjavur to number the un-numbered Criminal Appeal filing No.7597 of 2022 in the matter of appeal against the judgment and conviction imposed in S.T.C.No.124 of 2020 on the file of the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Thanjavur dated 29.11.2022 and to direct the Appellate Court to take the criminal appeal in the matter along with the suspension of sentence application and consider on merits in accordance with law.

2.The learned counsel for the petitioner would submit that the petitioner is arrayed as an accused in S.T.C.No.124 of 2020 on the file of the learned Judicial Magistrate, Fast Track Court (at Magisterial Level), Thanjavur, based on the complaint filed by the respondent for the offence under Section 138 of Negotiable Instruments Act, in respect of a cheque for a sum of Rs.5,30,000/-. He would further submit that after trial, the learned Magistrate had found the petitioner guilty and convicted him to undergo one



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year Simple Imprisonment and also directed the petitioner to deposit a sum of Rs.5,30,000/- within one month from the date of conviction and in default to undergo, two months Simple Imprisonment. He would further submit that on the date of judgment, since the petitioner's uncle passed away, he was unable to appear before the Court, the trial Court after conviction, has issued Non-Bailable Warrant of arrest, against the petitioner. He would further submit that immediately on the next day, the petitioner has filed an application seeking for copy of the judgment, whereas, the learned Magistrate has returned the copy application stating the following reasons, *“in this case, this Court passed the Judgment on 29.11.2022 and convicted the accused. When the time of pronouncement of judgment, the accused not present. NBW also issued. Hence, the application is not maintainable and returned”*. Thereafter, within the statutory period, the petitioner had preferred an appeal before the Principal District and Sessions Court, Thanjavur and he has also filed an application for dispensing with the production of judgment copy and it was returned and the appeal papers were also returned by the learned Appellate Court. He would further submit that the cheque amount is Rs.5,30,000/- and the petitioner is now ready to pay the entire amount and compromise the matter with the complainant, however since the appeal is not numbered, the



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petitioner is facing threat of arrest, pursuant to the warrant and he is also unable to get the sentence suspended against him and thereby, he would seek to direct the Appellate Court to number the unnumbered Criminal Appeal filing No.7597 of 2022.

3.The learned counsel for the petitioner would also submit that the judgment of the Hon'ble Supreme Court in *Meters and Instruments Private Limited and another*, reported in **2018 (1) SCC 560**, has held that the offence under Section 138 of the Negotiable Instruments Act is primarily a civil wrong and that though compounding requires consent of both parties, even in the absence of such consent, the Court in the interests of justice, on being satisfied that the complainant has been duly compensated, can in its discretion close the proceedings and discharge the accused and now the petitioner is ready to pay the entire cheque amount and compound the matter with the complainant.

4.Heard. Perused the materials available on record.



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5. Since the petitioner did not appear before the Court on the date of judgment, the learned Judicial Magistrate, Fast Track Court (at Magisterial Level), Thanjavur has issued Non-Bailable Warrant of arrest and the Court has also refused to furnish copy of the judgment and the petitioner is also unable to number the appeal. It is the case of the petitioner that he is ready to deposit the entire cheque amount and he is ready to compound the matter with the complainant.

6. Taking into consideration the submission made by the learned counsel for the petitioner that the petitioner is ready to compound the offence by paying cheque amount, in the interest of justice, the petitioner within one week from the date of receipt of the order is directed to surrender before the learned Judicial Magistrate, Fast Track Court (at Magisterial Level), Thanjavur and file applications to recall non bailable warrant, temporary suspension of sentence and furnish copy of judgement. He shall also take a Demand Draft for the sum of Rs.5,30,000/- in favour of the learned Principal District and Sessions Judge, Thanjavur and also file an affidavit stating that he is ready to pay the cheque amount to the complainant and compound the matter at the time of appeal and on such affidavit of undertaking filed and the



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demand draft being shown, the learned Judicial Magistrate, Fast Track Court(Magisterial Level) Thanjavur shall recall the warrant, temporarily suspend the sentence and furnish copy of the judgement to the petitioner. Within one week therefrom the petitioner shall deposit the demand draft for Rs.5,30,000/- before the learned Principal District and Sessions Judge, Thanjavur to the credit of un-numbered Criminal Appeal No. 7597 of 2022 and the appeal shall be numbered if it is in order and shall be disposed of by the appellate court in accordance with law.

8.With the above directions, this Criminal Original Petition is disposed of.

27.01.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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Note: (i) Registry is directed to return the original papers to the petitioner after substituting with the xerox copies.

(ii) Issue order copy on 09.02.2023.



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To
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- 1.The Principal District and Sessions Judge, Thanjavur.
- 2.The Judicial Magistrate,
Fast Track Court at Magistrial Level, Thanjavur.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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A.D. JAGADISH CHANDIRA, J.

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