



CRL.O.P.(MD)No.14444 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED: 16.08.2023

CORAM

THE HONOURABLE DR.JUSTICE D.NAGARJUN

CRL.O.P.(MD)No.14444 of 2023

and

CrI.M.P.(MD).No.11382 of 2023

Palanikumar

... Petitioner

Vs

Murugesan

.. Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to issue appropriate direction by setting aside the impugned order passed by the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur in Cr.M.P.No.3546 of 2023 in C.A.No.98 of 2023 dated 28.07.2023.

For Petitioner : Mr.G.Mariappan

ORDER

This Criminal Original Petition is filed under Section 482 of Cr.P.C challenging the order passed by the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur in Cr.M.P.No.3546 of 2023 in C.A.No.98 of 2023, dated 28.07.2023, wherein, the request of the petitioner to extend the time for a period of one week for depositing of a sum of Rs.50,000/- as directed by the learned District and Sessions Judge in Cr.M.P.No.3546 of 2023 in C.A.No.98 of 2023 as per the orders dated 11.07.2023, was declined.



CRL.O.P.(MD)No.14444 of 2023

WEB COPY

2. It is submitted by learned counsel for the petitioner that the petitioner / accused was found guilty for the offence under Section 138 of Negotiable Instruments Act, 1881 in C.C.No.21 of 2020, as per the Judgment, dated 13.06.2023, on the file of the learned Judicial Magistrate, Aruppukkottai. Aggrieved by the same, the petitioner has preferred C.A.No.98 of 2023 on the file of the learned Principal District and Sessions Judge, Srivilliputhur and also moved an application under Section 389 (1) of Cr.P.C. vide Cr.M.P.(No).3546 of 2023. Learned Sessions Judge has suspended the sentence imposed by the trial Court on condition of deposit of a sum of Rs.50,000/- (Rupees Fifty Thousand only) before the trial Court within fifteen days from the date of the order.

3. It is submitted by learned counsel for the petitioner that the petitioner could not organize to deposit the amount of Rs.50,000/- as directed by the learned Appellate Court, on which, the petitioner has approached the learned Principal District and Sessions Judge again and filed an application for extension of time for a period of one week to deposit of Rs.50,000/- and the same was stated to have been returned, on which, the petitioner has allegedly filed an application through online in Online No.TNVR010050642023 seeking same relief. The learned Principal District and Sessions Judge has however



CRL.O.P.(MD)No.14444 of 2023

passed docket order on Cr.M.P.No.3546 of 2023 which was filed for suspension of sentence as under:

“Accused is not comply the order of the Court. Court order not comply with hence suspense sentence order not give. Suspension order by the trial court is directed to take necessary step under convict to the accused

4. Perused the records and also the order passed by the learned Principal District and Sessions Judge.

5. Section 148 of the Negotiable Instruments Act, 1881, reads as under:-

"148. Power of Appellate Court to order payment pending appeal against conviction.—(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent. of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.



CRL.O.P.(MD)No.14444 of 2023

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant."

Section 148 of N.I. Act, gives power to the Appellate Court pending appeal against the conviction, may order the appellant to deposit minimum to the extent of 20% of fine or compensation awarded by the trial Court within sixty days from the date of the order and the said period can also be extended for thirty more days.

6. However, the appellate Court in C.A.No.98 of 2023 has directed the petitioner to deposit 50% of the cheque within fifteen days and when the petitioner has approached for extension of time, the Appellate Court has declined to consider the same. It appears that the Appellate Court has lost sight of Section 148 of Negotiable Instruments Act, 1881, thereby, the order passed by the appellate Court in Cr.M.P.No.3546 of 2023 is illegal.



CRL.O.P.(MD)No.14444 of 2023

WEB COPY

7. Considering the same, the petitioner is permitted to deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) as directed in CrI.M.P.No. 3546 of 2023 dated 11.07.2023 on or before **31.08.2023**, until then, the suspension order passed by the appellate Court shall continue.

8. In view of the above, the Criminal Original Petition is disposed of. Consequently, the connected miscellaneous petition is closed.

16.08.2023

NCC:yes/no

Index:yes/no

Internet:yes/no

tsg

Note: Issue order copy on **25.08.2023**.

To

1.The Principal District and Sessions Judge,
Virudhunagar District, Srivilliputhur.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



CRL.O.P.(MD)No.14444 of 2023

DR.D.NAGARJUN, J.

tsg

CRL.O.P.(MD)No.14444 of 2023

16.08.2023