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Crl.O.P.(MD)No.16675 of 2023



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **21.09.2023**

CORAM:

THE HONOURABLE DR.JUSTICE **D.NAGARJUN**

Crl.O.P.(MD) No.16675 of 2023

Kumutha

... Petitioner

Vs.

John Kennedy

..Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to set aside the return docket order dated 21.07.2023 in unnumbered C.A.SR.No.EC-TNTJ01-00884/2023 passed by the learned Principal Sessions Judge, Thanjavur, and issue a direction, directing the learned Principal Sessions Judge, Thanjavur, to take number the appeal and suspension of sentence petition on file, filed by the petitioner and consequently, proceed with the case in accordance with law within the stipulated time.

For Petitioner : Mr.S.Balasubramanian



ORDER

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This Criminal Original Petition is filed seeking for setting aside the docket order dated 21.07.2023 passed in C.A.SR.No.EC-TNTJ01-00884/2023 by the learned Principal Sessions Judge, Thanjavur and for a consequential direction to the learned Principal Sessions Judge, Thanjavur, to take the appeal and suspension of sentence petition on file and number the same.

2. According to the learned counsel appearing for the petitioner, the petitioner was found guilty in S.T.C.No.38 of 2021 by the learned Judicial Magistrate (Fast Track Court), Thanjavur, for the offence punishable under Section 138 of Negotiable Instrument Act and was directed her to undergo simple imprisonment for a period of one year and pay a sum of Rs.2,75,000/- (Rupees Two Lakhs Seventy Five Thousand only) as compensation within a period of one month, in default, the petitioner shall undergo two months simple imprisonment. Aggrieved over the same, the petitioner has preferred an appeal before the learned Principal Sessions Judge, Thanjavur. However, the said appeal was returned stating that non-bailable warrant was issued against the petitioner by the trial Court.



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3. According to the learned counsel appearing for the petitioner, when the judgment was pronounced by the learned Judicial Magistrate (Fast Track Court), Thanjavur, on 21.06.2023 in S.T.C.No.38 of 2021, the petitioner/convict was not present and thereby, the trial Court, while pronouncing the judgment, has got issued the Non-bailable warrant. As per Chapter-VI of the Code of Criminal Procedure, summons or warrants will be issued to compel the accused to face the trial in the criminal case. However, once the trial is completed, in case if the accused/convict is absent, the trial Court is expected to issue committal warrant. However, in the present case on hand, the trial Court has issued the Non-bailable warrant.

4. Leaving the above facts aside, the convict is having a right to prefer an appeal as per Chapter-XXIX of the Code of Criminal Procedure. There is no law which prevents the convict to prefer an appeal, when Non-bailable warrants or committal warrants are pending. Therefore, when the convict has got a statutory appeal right, the Appellate Court ought not to have returned the appeal on the ground that the Non-bailable warrant issued by the trial Court is still pending. Once the appeal is admitted, in case while considering the application for



suspension of sentence, the Appellate Court is at liberty to grant a conditional order directing the petitioner to surrender before the trial Court. Therefore, on the ground that the Non-Bailable warrants are pending, the statutory right of the appeal cannot be rejected.

5. In view of the above, the order passed in C.A.SR.No.EC-TNTJ01-00884/2023 on 21.07.2023 by the learned Principal Sessions Judge, Thanjavur is set aside and the petitioner is directed to file an appeal before the Appellate Court, on which, the Appellate Court is directed to consider and number the same, if it is otherwise in order and pass appropriate orders.

6. Accordingly, this Criminal Original Petition is allowed.

Index : Yes/No
Internet : Yes/No
ssb

21.09.2023

Note: The Registry is directed to return the original documents, if any, to the petitioner enabling her to represent the same before the Appellate Court.



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DR.D.NAGARJUN. J.

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