



Crl.O.P.(MD)No.20919 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **19.12.2023**

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No. 20919 of 2023

M.Abdul Rahim

... Petitioner

Vs.

L.Senthilkumar

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to set aside the docket order, dated 11.08.2023 passed in Crl. Appeal Sr.No.9510 of 2023, against STC.No.71 of 2022 by the Principal District and Sessions Judge, Thanjavur and direct the Judicial Magistrate, Fast Track Court, Thanjavur to recall non-bailable warrant issued in STC.No.71 of 2022,, dated 28.03.2023 and consider the petition for suspension of sentence under Section 389(2) Cr.P.C., on the same day.

For Petitioner : Mr.S.A.S.Alaudeen

ORDER

This Criminal Original Petition has been filed to set aside the docket order, dated 11.08.2023 passed in Crl.Appeal SR.No.9510 of 2023, against STC.No.71 of 2022 by the Principal District and Sessions



Crl.O.P.(MD)No.20919 of 2023

Judge, Thanjavur and direct the Judicial Magistrate, Fast Track Court, Thanjavur to recall non-bailable warrant issued in STC.No.71 of 2022, dated 28.03.2023 and consider the petition for suspension of sentence under Section 389(2) Cr.P.C., on the same day.

2. The petitioner herein was found guilty for the offence under Section 138 of Negotiable Instruments Act and thereby, convicted under Section 255(2) Cr.P.C., and he shall undergo sentence of one year Simple Imprisonment. Apart from that the accused was directed to pay a sum of Rs.5,00,000/- (Rupees Five Lakhs only) as compensation under Section 357(3) Cr.P.C., to the complainant within one month from the date of Judgment, in default, to undergo two months Simple Imprisonment. The default sentence shall run consecutively. At the time of pronouncement of the Judgment, the accused was not present. Hence, Non Bailable Warrant was issued against him.

3. Later, the petitioner filed the appeal before the Appellate Court viz., Principal District and Sessions Judge, Thanjavur and that Memorandum of Appeal was returned stating that the Appeal



Crl.O.P.(MD)No.20919 of 2023

Memorandum is not maintainable and apart from that, it is also directed that the suspension of sentence must be obtained from the trial Court.

4. The grievance of the petitioner is that the appeal memorandum is periodically returned without entertaining the same. Repeated returns stating that non bailable warrant was issued at the time of pronouncing Judgment may not be a proper reason. That can be taken into account at the time of hearing the appeal after numbering the same. So that point ought to have been decided on the judicial side. Even without numbering the appeal memorandum returned the same by citing the above said reason may not be proper. So, there will be a direction to the appellate Court to entertain the appeal memorandum and if any clarification is required on the maintainability of the appeal it must be decided on the judicial side.

5. With the above observation, this Criminal Original Petition is allowed.

19.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
trp

Note: Registry is directed to return the original papers after substituting

3/5



Crl.O.P.(MD)No.20919 of 2023

the xerox copy of the same.

WEB COPY
To

1. Principal District and Sessions Judge, Thanjavur.
2. The Judicial Magistrate, Fast Track Court, Thanjavur



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Crl.O.P.(MD)No.20919 of 2023

G.ILANGO VAN,J

trp

Order made in
Crl.O.P.(MD)No. 20919 of 2023

Dated: 19.12.2023