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Crl.R.C.No.200 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.02.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.200 of 2024

and

Crl.M.P.Nos.1757 & 1759 of 2024

D.Sathyannarayanan

... Petitioner

Vs.

A.Kannabiran

... Respondent

PRAYER: Criminal Revision Case has been filed under Sections 397 and 401 of Cr.P.C, praying to set aside the order dated 11.12.2023 passed in C.A.No.757 of 2023 on the file of the Principal Judge, City Civil Court, Chennai filed against the judgment dated 01.11.2023 passed by the learned Metropolitan Magistrate, Fast Track Court II, Egmore at Allikulam, Chennai passed in C.C.No.5281 of 2020.

For Petitioner : Mr.Manimaran

ORDER

This Criminal Revision Petition has been filed seeking to set aside the order dated 11.12.2023 passed in C.A.No.757 of 2023 on the file of the



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Principal Sessions Judge, City Civil Court, Chennai filed against the judgment dated 01.11.2023 passed by the learned Metropolitan Magistrate, Fast Track Court II, Egmore at Allikulam, Chennai passed in C.C.No.5281 of 2020.

2.The petitioner, who is an accused in a private complaint filed under Section 138 of the Negotiable Instruments Act by the respondent in C.C.No.5281 of 2020, was convicted by the Trial Court by judgment dated 01.11.2023, against which, he preferred an appeal before the Principal Sessions Judge, Chennai in C.A.No.757 of 2023. He had also filed a petition seeking suspension of sentence in Crl.M.P.No.31107 of 2023. The Appellate Court by order dated 02.12.2023, dismissed the petition for the reason that the Trial Court had suspended the sentence till 30.11.2023. The petitioner has to file an appeal before the Appellate Court on or before 30.11.2023 and ought to have obtained appropriate order. The petitioner on the other hand filed a bail petition only on 28.11.2023 and his appeal papers were returned



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for compliance of some defects, the same was represented on 01.12.2023 and hence, Appellate Court finding that the trial Court might have issued a conviction warrant against the petitioner, dismissed the suspension of sentence petition. The petitioner's appeal was dismissed on 11.12.2023 for the reason that the compensation amount as ordered by the Trial Court have not been paid and the Trial Court suspension of sentence is till 30.11.2023 only, and the petitioner not surrendered before the Sessions Court. Hence, the appeal was dismissed for default.

3.The contention of the petitioner is that the appeal being a statutory bail cannot be dismissed without giving an opportunity of hearing to the appellant. As per Section 386 of Cr.P.C., the appellant has to be heard. In this case, no opportunity was given to the appellant and he was not heard. He further submitted that due to unprecedented rain and heavy flooding in Chennai, huge damage caused to his property and dwelling house, hence, the petitioner was unable to mobilise funds within time. The petitioner had



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pleaded to the Sessions Court about the same but on technicality, appeal was dismissed. The learned counsel on instructions submits that the usual order passed by the Sessions Court in such cases is cheque amount of 20% to be made as pre-deposit in the appeal. The petitioner is ready to deposit 20% of Rs.5,00,000/-, i.e., Rs.1,00,000/-(Rupees One Lakh only).

4.Considering the submissions made and on a perusal of the material available on record, it is seen that no appeal to be dismissed for default without giving an opportunity of hearing the appellant which is mandatory and the appeal being a statutory appeal. The reason given by the petitioner for not paying the compensation amount within the stipulated time is acceptable. Further, usual procedure is that 20% of the cheque amount is directed to be deposited by the persons convicted by the trial Court in Negotiable Instruments Act cases.



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5. In view of the same, the petitioner is directed to deposit Rs.1,00,000/- to the credit of C.C.No.5281 of 2020 before the Trial Court on or before 26.02.2024 and thereafter produce the proof of the same before the Registry of the Sessions Court. The Sessions Court is directed to condone the delay of suspension of sentence and restore the appeal in C.A.No.757 of 2023 and shall suspend the sentence of the petitioner and to grant bail and thereafter dispose of the appeal in its usual course.

6. Accordingly, the judgment dated 11.10.2023 in C.A.No.757 of 2023 passed by the Principal Sessions Judge, City Civil Court, Chennai is set aside and the revision is, accordingly, allowed. Consequently, connected miscellaneous petitions are closed.

09.02.2024

Index : Yes/No

Internet : Yes/No

Speaking order / Non-speaking order

Neutral Citation : Yes/No

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M.NIRMAL KUMAR, J.

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To

- 1.The Metropolitan Magistrate,
Fast Track Court No.II,
Egmore at Allikulam, Chennai.
- 2.The Principal Sessions Judge,
City Civil Court, Chennai.
- 3.The Public Prosecutor,
High Court, Madras.

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