



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P. No.3226 of 2024

S.Govindan

...Petitioner

Vs

K.Mani

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the docket order dated 06.01.2024 made C.A.Sr.No.17 of 2024 on the file of the Principal District and Sessions Judge, Salem and consequently direct the Principal District and Sessions Judge, Salem to entertain the Criminal Appeal filed in C.A.Sr.No.17 of 2024 along with condone delay petition and suspension of sentence petition.

For Petitioner : Mr.K.Sathish Kumar

ORDER

This criminal original petition has been filed to set aside the docket order dated 06.01.2024 made in Crl.A.Sr.No.17 of 2024 on the file of the Principal



District and Sessions Judge, Salem.

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2.The petitioner was convicted for offence under Section 138 of the Negotiable Instruments Act by the District Munsif cum Judicial Magistrate, Edappadi through judgment dated 16.08.2023 in C.C.No.209 of 2019. The Trial Court imposed the sentence of one year rigorous imprisonment and directed to pay a sum of Rs.35 Lakhs with interest at the rate of 9% per annum as compensation and in default to undergo one month simple imprisonment.

3.The petitioner did not appear before the Trial Court on the date of judgment and therefore, non bailable warrant was issued against the petitioner.

4.The petitioner aggrieved by the above judgment, filed an appeal before the Court below with a delay of 96 days. The petitioner also filed an application for suspension of sentence. All these papers were returned by the Court below through the impugned docket order dated 06.01.2024. Aggrieved by the same, the present criminal original petition has been filed before this Court.

5.In the considered view of this Court, the filing of the appeal with delay



cannot be prevented just because a non bailable warrant has been issued against the petitioner by the Trial Court. Such non bailable warrant will have a bearing only at the time of moving the application for suspension of sentence. Such application may not be maintainable and the petitioner must file an application for bail by surrendering before the Appellate Court.

6. In the instant case, there is a delay in filing the criminal appeal and hence, it has to be first condoned after issuing notice to the respondent. Till the delay is condoned and criminal appeal is taken on file, there is no question of suspending the sentence.

7. In the light of the above discussion, the petitioner shall re-present the papers before the Court below and the condone delay petition and the memorandum of criminal appeal shall be entertained. The condone delay petition shall be considered after issuing notice to the respondent. After the delay is condoned, it will be left open to the petitioner to file a bail petition after surrendering before the Appellate Court. At that point of time, it is left open to the Appellate Court to deal with the same by imposing necessary conditions.



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N.ANAND VENKATESH, J

SSR

8.This criminal original petition is disposed of in the above terms.

9.The Registry is directed to return back the original appeal papers to the learned counsel for the petitioner in order to enable the petitioner to re-present the papers before the Court below.

15.02.2024

(1/2)

Index : Yes/No

Speaking order: Yes/No

Neutral citation: Yes/No

ssr

Note: Issue Order Copy on 19.02.2024

To

1.The Principal District and Sessions Judge, Salem

2.The Public Prosecutor,
High Court, Madras.

Crl.O.P. No.3226 of 2024