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Crl.OP.No. 8306 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.04.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.No.8306 of 2024

and

Crl.MP.No.6069 of 2024

Musthafa

... Petitioner

Vs.

Mohammed Ismail

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, prayed to set aside the condition No.(i) imposed in Crl.MP.No.330 of 2024 dated 25.03.2024 in Crl.Appeal.No.9 of 2024 on the file of the learned Principal District and Sessions Judge, Perambalur, as illegal and pass such further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.S.Vasanth

ORDER

The petitioner herein, a convict for the offence under Section 138 of Negotiable Instruments Act. The trial Court found in guilty for issuing



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cheque for Rs.10,00,000/- without sufficient fund and sentenced him to undergo six months simple imprisonment and to pay Rs.10,00,000/- , the cheque amount as compensation and in default two months imprisonment. On the date of judgment, the accused did not appear before the Court and hence warrant was issued to secure him and to commit him to prison. Aggrieved by the judgment, the petitioner has preferred an appeal and also application for suspension of sentence.

2. The first Appellate Court has entertained the petition as admitted the appeal and entertained the application for suspension of sentence. The first Appellate Court suspended the sentence on condition to deposit 20% of the compensation amount i.e., Rs.2,00,000/- on or before 05.04.2024. Being aggrieved by the condition imposed, the present petition is filed under Section 482 of Cr.P.C.

3. The learned counsel for the petitioner relying upon the judgment of this Court as well as the Kerala High Court and submit that imposing condition to deposit 20% of the compensation amount is not an mandatory provision and the discretion must be exercised prudently.

Therefore, it is contended that in this case, the imposition of payment of



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20% compensation amount is not impugned with the judgment. This Court has no quarrel with the proposition of law laid down by the Judges of this Court and Kerala Court and even by the Hon'ble Supreme Court. When there is a provision under the statute, enabling the Appellate Court to impose condition by suspending the sentence and exercising that power cannot be faulted, unless it is malafide exercise of the discretionary power.

4. In this case, the First Appellate Court has rightly given reasons for imposing the condition. This Court finds no error or illegality or malafide in that. Hence, this Criminal Original Petition is dismissed. The time for depositing the amount is extended from 05.04.2024 to 15.04.2024, so that the petitioner herein can comply with the condition and proceed with the appeal.

5. With the above directions, this Criminal Original Petition is disposed of. Consequently, the connected miscellaneous petition is closed.

Vv

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To

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1. The Principal District and Sessions Judge,
Perambalur
2. The Public Prosecutor,
High Court of Madras,
Chennai.



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Dr.G.JAYACHANDRAN,J.

Vv

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