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Crl.O.P.No.9182 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

CORAM

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN**

Crl.O.P.No.9182 of 2024

N.Kannan

... Petitioner

Vs.

M.Manonmani

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to set aside the returned order in form of check slip dated 02.04.2024 passed in CA.(Filing) No.1192 of 2024 on the file of the Principal District and Sessions Judge, Salem, consequently direct the learned Principal District and Sessions Judge, Salem to entertain the above appeal and number the same.

For Petitioner : Mr.R.Nalliyappan

ORDER

The petitioner herein was convicted in C.C.No.96 of 2023 on 23.02.2024 had not surrendered before the Court instead has filed appeal. The lower appellate Court refused to entertain the appeal without surrender. The order of returning the appeal papers by the lower appellate Court is under challenged.



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2. The Court, on perusing the records and hearing the submissions made by the learned counsel appearing for the petitioner finds that it is a case arising under Section 138 of N.I.Act, the petitioner was found guilty and sentenced to undergo Simple Imprisonment for a period of one year and pay Rs.2,50,000/- as compensation within 30 days, in default he shall undergo Simple Imprisonment for further period of three months, the petitioner neither present on the day of judgment nor present before the appellate Court while moving his appeal. The trial Court has issued Non Bailable Warrant against the petitioner. For the said reason, the appeal memorandum as well as the connected petitions were returned.

3. An absconding accused against whom NBW is pending cannot have the privilege of maintaining his appeal. Unless and until he appears in person gets his NBW recalled or gets suspension of sentence by the appellate Court.

4. This Court is of the view that the order of the lower appellate Court returning the appeal papers is consonance with the



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provision of law. An absconder cannot have the privilege of maintaining his appeal without his appearance. If the petitioner surrender before the trial Court and gets the warrant recalled on condition or appear before the lower appellate Court and seek for suspension of sentence, the same may be considered as per law and also the appeal be entertained.

5. With this observation and directions, this Criminal Original Petition is disposed of.

16.04.2024

Index : Yes/No

Neutral Citation : Yes/No

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To

The Principal District and Sessions Judge, Salem



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Dr.G.JAYACHANDRAN,J.

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