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CRL.O.P.NO.12197 OF 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON: 16 / 05 / 2024

ORDER PRONOUNCED ON: 22 / 05 / 2024

CORAM:

THE HON'BLE MR.JUSTICE R.SAKTHIVEL

CRL.O.P.NO.12197 OF 2024

S.M.Arul Nandi Sivam

... Petitioner / Petitioner /
Accused

Versus

K.C.Soundarapandiyan

... Respondent / Respondent/
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, praying to set aside the order dated 22.04.2024 in Crl.M.P.No.12306 of 2024 i.e., suspension of sentence on the file of Court of Sessions at Chennai.

For Petitioner : Mr.John Sathyan
Senior Counsel for Mr.D.Manimaran

For Respondent : Notice dispensed with in this Order.

ORDER



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This Criminal Original Petition has been presented on *May 14, 2024* under Section 482 of the 'Code of Criminal Procedure, 1973 (Act No.2 of 1974)' (henceforth 'Cr.P.C.'), praying to set aside the order dated *April 22, 2024* made in *Crl.M.P.No.12306 of 2024* in *C.A.No.311 of 2024* on the file of the learned Principal Sessions Judge, Chennai pending disposal of *C.A.No.311 of 2024*, which is now made over to XX Additional Sessions Court, Chennai.

Factual Matrix

2.The petitioner herein is the accused and the respondent herein is the complainant before 'II Metropolitan Magistrate Court, Egmore, Chennai' (henceforth 'Trial Court'). The petitioner and the respondent are trustees of M/s.Vasudeva Pillai Trust. The respondent filed a private complaint against the petitioner alleging that the petitioner committed the offence of criminal defamation punishable under Section 500 of 'The Indian Penal Code, 1860' (henceforth 'IPC'), before the Trial Court. The Trial Court took the case on file in *Calender Case No.1432 of 2015*, and after full trial

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and hearing both sides, convicted the petitioner under Section 500 of IPC and imposed ONE YEAR Simple Imprisonment with fine of Rs.2,000/-, in default thereof, to undergo THREE MONTHS Simple Imprisonment.

3. Feeling aggrieved with the said conviction and judgment, the petitioner preferred an appeal in *C.A.No.311 of 2024* before the Principal Sessions Judge, Chennai along with a petition under section 389(1) of Cr.P.C. in *Crl.M.P.No.12306 of 2024* in *C.A.No.311 of 2024* seeking suspension of sentence. The learned Principal Sessions Judge, Chennai, after hearing both sides, dismissed the petition. The operative portion of the dismissal order reads thus:

“3.This court has also perused the memorandum of appeal and the submission made by the petitioner's counsel. Admittedly, the petitioner was found guilty u/s.500 of IPC and sentenced to undergo one year simple imprisonment and to pay fine of Rs.2,000/-, in default, to undergo three months simple imprisonment by the learned II Metropolitan Magistrate, Egmore, Chennai vide judgment dated 25.03.2024. On the date of judgment, the petitioner was absent and hence, N.B.W. was issued against him and the same pending. It is the admitted case of the petitioner / accused that no petition u/s 389(3) Cr.P.C for



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suspending the sentence was filed on behalf of the petitioner / accused on the date of judgment and the sentence cannot be suspended since the convicted accused was not personally present before the trial court. Even today, the petitioner / accused has not come forward to surrender before this court. Once conviction warrant has been issued, the sentence cannot be suspended by the trial court and also the appellate court and the only remedy available to the petitioner / accused is that he has to surrender and sought for bail.

4.For the reasons stated above, this court is of the view that the petition to suspend the sentence has to be dismissed as not maintainable.”

3.1. Thereafter, the case was made over to the XX Additional Sessions Court, Chennai for disposal as per law and the same is currently posted on *June 14, 2024*.

4. Feeling aggrieved with the said dismissal order, the petitioner has filed this petition under Section 482 of Cr.P.C.

ARGUMENTS

5. Mr. John Sathyan, the learned Senior counsel for the petitioner



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has submitted that, the Trial Court after concluding trial, posted the matter on *March 13, 2024* for pronouncing judgment. On that date, the petitioner and the respondent were present, and the Trial Court adjourned the case to *March 21, 2024* for pronouncing judgment. On *March 21, 2024* also, the petitioner and the respondent were present, however, judgment was not pronounced and the matter was adjourned to *March 25, 2024* for pronouncing judgment. On *March 25, 2024*, the petitioner was unable to attend the Court since he was unwell and a petition under section 317 of Cr.P.C. was duly filed. But, the Trial Court dismissed the said petition, pronounced the judgement and issued Non-Bailable warrant (henceforth 'N.B.W.') against the petitioner.

5.1.Learned Senior Counsel further submitted that, though, under Chapter XX of Cr.P.C., Summons Case procedure is contemplated for the offence punishable under section 500 of Cr.P.C., the Trial Court ought to have given an opportunity to file an application under section 389(3) of Cr.P.C. seeking bail. Since the Trial Court decided to impose punishment of **One Year simple imprisonment** along with fine, it is obligatory on the part of the Trial Court to have adjourned the matter, in view of section 353 (6) of Cr.P.C.



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If the Trial Court had given an adjournment, it would have been an opportunity to the petitioner to appear before the Trial Court, the petitioner would have filed an application under section 389(3) of Cr.P.C. seeking bail and the Trial Court would have probably granted bail owing to the nature and gravity of the offence. The petitioner was deprived of the said opportunity under section 389(3) by the Trial Court, which is against the principles of natural justice and the fair trial procedure.

5.2.Learned Senior Counsel further submitted that, even if the Trial Court had not granted bail under section 389(3) of Cr.P.C., the appellate court while exercising power under section 389(1) of Cr.P.C. can entertain a petition for suspension of execution of sentence, the only condition being the existence of a valid appeal, and decide the same on merits. The issuance of N.B.W. by the Trial Court against the petitioner would not curtail the powers of the appellate court under section 389(1) of Cr.P.C. Further submitted that, the learned Principal Session Judge failed to consider the petition for suspension of execution of sentence in the right perspective. Accordingly, he prayed to set aside the order dated *April 22, 2024* in *Crl.M.P.No.12306 of*



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2024, and order suspension of execution of sentence pending disposal of
C.A.No.311 of 2024.

Discussion and Decision

6. This Court has perused the case file. Considering the nature of the petition and the fact that suspension of execution of sentence pending disposal of appeal is a matter between the court and the petitioner, this Court is of the view that notice to the respondent is not necessary and the same is hereby dispensed with.

7. Chapter XX of Cr.P.C., speaks about the trial of summons cases by magistrates. Section 2(w) of Cr.P.C., defines 'summons-case' as hereunder:

*“(w)'summons-case' means a case relating to an offence,
and not being a warrant-case.”*

7.1. Section 2(x) of Cr.P.C., defines 'warrant-case' as hereunder:

*“(w)'warrant-case' means a case relating to an offence
punishable with death, imprisonment for life or imprisonment for*



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a term exceeding two years.”

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7.2. ‘Simple Imprisonment for two years or fine or both’ is the punishment prescribed for the offence punishable under Section 500 of IPC and hence, it shall be dealt with summons procedure as per Chapter XX of Cr.P.C. As per Schedule 1, Chapter XX-A of Cr.P.C., the offence punishable under Section 500 Part II of IPC (Defamation in any other case), is classified as non-cognizable, bailable, and triable by magistrate of first class. Considering the nature of the case, the Trial Court should have insisted on the petitioner to execute a bond as per section 88 of Cr.P.C., so as to offer the procedural safeguard under section 389(3) of Cr.P.C at the time of final judgement. This Court is mindful of the fact that sections 204 and 205 of Cr.P.C. do not explicitly state the above narration. However, this Court through a plethora of cases, has fortified the view that, whenever accused appeared before the Court in obedience of process issued to him/her under section 204 of Cr.P.C., if the court deems fit, the Court shall obtain a bond under section 88 of Cr.P.C. [vide *Venkatesh Babu and others Vs. State* reported in *2008 SCC Online Mad 1466 : (2009) 1 LW (Crl) 80* and *S.Kannan Vs. State* reported in *2011 SCC Online Mad 255*. In this case,



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whether the petitioner had executed a bond as per section 88 of Cr.P.C. or not, is not known to this Court.

7.3.Further, the said offence is compoundable with the permission of the Court under section 320 (2) of Cr.P.C. In summons case, as per section 251 of Cr.P.C., it's sufficient if the substance of accusation in the complainant's case is explained to the accused and there is no need to frame formal charge. In a summons case, the magistrate is not enjoined to hear the accused on the question of sentence. However, if the magistrate decides to impose punishment of imprisonment instead of just fine, in such a case, the magistrate shall give an opportunity to the accused to seek bail under section 389(3) of Cr.P.C. subject to the proviso under section 353(6) of Cr.P.C. Section 353 (6) reads thus.

“(6) If the accused is not in custody, he shall be required by the Court to attend to hear the judgment pronounced, except where his personal attendance during the trial has been dispensed with and the sentence is one of fine only or he is acquitted:

Provided that, where there are more accused than one, and one or more of them do not attend the Court on the date on



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which the judgment is to be pronounced, the presiding officer may, in order to avoid undue delay in the disposal of the case, pronounce the judgment notwithstanding their absence.”

8.This Court has perused the Trial Court's judgment. The case on hand is a summons case. The Trial Court has followed the summons case procedure contemplated under Chapter XX of Cr.P.C. But, in the operative portion of the judgment, the Trial Court has wrongly mentioned as if the judgment was pronounced under Section 248(2) of Cr.P.C. In fact, Section 255 of Cr.P.C., is the correct provision for recording acquittal or conviction in a summons case. Needless to mention that mere quoting wrong provision of law would not prejudice the rights of any of the parties.

9.In this case, the Trial Court had adjourned the matter twice for pronouncing judgements. The petitioner was present on both the occasion. On the third occasion *i.e., March 25, 2024*, the Trial Court pronounced judgement in the absence of the petitioner rejecting his petition under section 317 of Cr.P.C. Learned Senior counsel, inviting the attention of this Court to the medical certificate annexed in the typed set of papers, submitted that the



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petitioner was unwell due to which he could not attend court that day. In these circumstances, the Trial Court ought to have considered the petition filed by the petitioner under section 317 of Cr.P.C., in favour of the petitioner. Instead, the Trial Court pronounced the judgement in his absence and issued N.B.W. against the petitioner. The procedure followed by the Trial Court is against the principles of natural justice and fair trial procedure. The erroneous procedure adopted by the Trial Court has infringed upon the petitioner's valuable right to seek bail under Section 389(3) of the Cr.P.C.

10.As rightly pointed out by the learned Senior Counsel, existence of valid appeal is the condition precedent for the appellate court to exercise its jurisdiction under section 389(1) of Cr.P.C. This view has been fortified by this Court in ***M.Senthilkumar v. P.Ramalingam*** reported in **2016 SCC Online Mad 7912**. The relevant paragraphs of the judgement are Paragraph Nos.15 and 16. The factual matrix of that case has been covered in Paragraph No.2 of the judgement. For ready reference, Paragraph Nos. 2, 15 and 16 are extracted hereunder.



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Paragraph No.2:

"2.The Learned Principal Sessions Judge, Karur, on 01.12.2015 in Cri.M.P. No. 1305 of 2015 in C.A. No. 81 of 2015 had observed the following:

"Heard both sides.

The learned counsel for the petitioner submitted that the petitioner has been convicted by the Learned Judicial Magistrate (FTC), Karur on 12.05.2015 in C.C. No. 560 of 2013 and the petitioner was sentenced to undergo simple imprisonment for six months for the offence under Section 138 of N.I. Act. According to him, in the absence of the accused, the judgment and order of sentence was passed by the trial Court and immediately, the trial Court issued a NBW to secure the petitioner to serve the period of sentence. He therefore prayed for suspension of the sentence passed by the trial Court till the disposal of the criminal appeal.

The respondent has raised objection for the petition and contended that it is for the petitioner to move the trial Court to get the appropriate relief on surrender of the accused and that this petition is not maintainable before this Court.

Considering the facts and circumstances of the case, this Court directs the petitioner to surrender before the trial Court, that on such surrender, the trial Court is directed to dispose of the application under Section 70(2) Cr.P.C. in accordance with law. With the above direction this petition is dismissed."

Paragraph No.15 and 16:



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15. *It is to be noted that a warrant remains valid unless it is executed or cancelled. Mere issuance of Non-bailable warrant, in a given case, without taking note of all aspects would not be an exercise of judicial powers as opined by this Court.*

16. *It cannot be gainsaid that ingredients of Section 389 of Cr.P.C., applies only to the affected person. Sub-Section(1) of Section 389 of Cr.P.C., empowers an appellate Court to suspend execution of sentence or when the affected person is in confinement to grant bail (suspension of the offence being an appealable one or not) pending any appeal before it. The condition precedent for exercise of jurisdiction, by a Court of law is an existence of an appeal, which means a valid appeal presented before the Court. While suspending the suspension of sentence, it is palatable/desirable that an appellate Court imposes a condition of deposit of the compensation amount in Court within certain period. If the fine sum is on the higher side, the Court can direct at least a portion thereto to be remitted. The Appellate Court, under Section 389 of Cr.P.C., while suspending the sentence, can enlarge a person on bail imposing necessary terms.*

11. On perusal of the Trial Court's judgment, this Court is of the *prima facie* view that the petitioner has a fair chance of acquittal. Further, the petitioner has permanent residence and deep roots in the society, and perusal of the case file reveals no adverse conduct by the petitioner before the Trial Court; keeping in mind the above, this Court is of the view that there is less



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possibility of absconding. Considering the cumulative facts and circumstances of the case, this Court is of the view that this is a fit case for ordering suspension of execution of sentence. Though limited prayer has been sought in the petition, this Court while exercising jurisdiction under section 482 of Cr.P.C. has wide powers and thus, larger relief can be granted to secure justice. This Court firmly believes that the process of adjudication encompasses not only the interpretation of laws but also the pursuit of justice. Hence, in the interest of justice and with a view to avoid multiplicity of proceedings, the execution of sentence of imprisonment imposed by the learned II Metropolitan Magistrate, Egmore, Chennai alone shall stand suspended till the disposal of *C.A.No.311 of 2024*, subject to the following.

- i) The petitioner shall remit the fine of Rs.2,000/- (Rupees Two thousand only) imposed by the Trial Court [II Metropolitan Magistrate Court, Egmore, Chennai] through his advocate or agent within 20 days from today, if not already remitted.



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- ii) The petitioner shall surrender before the learned Principal Sessions Judge, Chennai and execute a bond for Rs.25,000/- (Rupees Twenty Five Thousand only) along with two sureties, each for a like sum to the satisfaction of the learned Principal Sessions Judge, Chennai within 20 days from today.
- iii) The petitioner shall file the remittance of fine receipt issued by the Trial Court [II Metropolitan Magistrate Court, Egmore, Chennai], before the Principal Sessions Judge, Chennai.
- iv) If the learned Principal Sessions Judge is satisfied with the sureties produced, after recording the satisfaction, shall communicate the factum of suspension of execution of sentence of imprisonment to the Trial Court [II Metropolitan Magistrate Court, Egmore, Chennai] enabling him to recall/cancel the Non-Bailable Warrant



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issued against the petitioner.

- v) The petitioner/accused shall appear before the appellate court, where *C.A.No.311 of 2024* is pending, on all hearing dates commencing from *June 14, 2024* without fail.
- vi) In case, if the petitioner is unable to attend the hearing, he is entitled to file petition under section 317 of Cr.P.C. and the same shall be considered on its own merits in accordance with law by the appellate court.

12.In fine, the order dated *April 22, 2024* passed by the learned Principal Sessions Judge, Chennai, in *Crl.M.P.No.12306 of 2024* in *C.A.No.311 of 2024* is set aside and the execution of sentence of imprisonment imposed by the Trial Court [learned II Metropolitan Magistrate, Egmore, Chennai] alone shall stand suspended till the disposal of *C.A.No.311 of 2024* as per law. Accordingly, the Criminal Original Petition is allowed, subject to the conditions alluded to *supra*.



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13. Needless to mention that the observations made in this order are only for the limited purpose of disposing of this Criminal Original Petition and would not prejudice the merits of the case. The appellate court shall decide *C.A.No.311 of 2024* on its own merits as per law untrammelled by this order.

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Index : Yes
Internet : Yes
Neutral Citation : Yes
Speaking order
TK

Note:

- 1) Registry is directed to forthwith upload this order in the official website of this Court.**
- 2) All concerned to act on this order being uploaded in official website of this Court without insisting on certified hard copies. To be noted, this order when uploaded in official website of this Court will be watermarked and will also have a QR code.**



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To

- 1.The Principal Sessions Judge
Chennai.
- 2.The Chief Metropolitan Magistrate
Egmore, Chennai.
- 3.The XX Additional City Civil Court
Chennai.
- 4.The II Metropolitan Magistrate
Egmore, Chennai.
- 5.The Public Prosecutor
High Court of Madras.



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R.SAKTHIVEL, J.

TK

PRE-DELIVERY ORDER MADE IN
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