



WEB COPY



Crl.OP.No.12811 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.No.12811 of 2024

Jacob Suresh

... Petitioner

Vs.

K.Latha

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records of the returned docket order in Crl.A.No.SR.No.12345 of 2024 dated 08.05.2024, on the file of the Principal District and Sessions Court, Chennai and set aside the same.

For Petitioner : MrSharath Chandran

ORDER

The petitioner herein is an accused in C.C.No.2555 of 2021 on the file of XXVI Metropolitan Magistrate, Egmore, Chennai. The calendar case arises out of a private complaint initiated under Section 138 of Negotiable Instruments Act.

2. The learned trial Court on appreciation of evidence found the



CrI.OP.No.12811 of 2024

petitioner herein guilty of offence punishable under Section 138 of Negotiable Instruments Act and accordingly, sentenced him to undergo one year simple imprisonment and should pay a sum of Rs.21,50,000/- being the cheque amount as compensation, also imposed default sentence of one month simple imprisonment, if the compensation is not paid. It appears that on the date of judgment, the petitioner did not appear before the trial Court and therefore, the judgment of conviction pronounced in absentia.

3. Being aggrieved by the judgment of the trial court, the petitioner has filed appeal under Section 374 of Cr.P.C. The Appellate Court on perusing the appeal papers filed through e-court process and returned the same on the ground that certificate copy of suspension of sentence order not enclosed. Being aggrieved by the denial of entertaining the appeal which is a right conferred to any accused found guilty and convicted, the present petition under Section 482 of Cr.P.C is filed.

4. The learned counsel for the petitioner submits that the petitioner herein is bed-ridden for being diagnosed for advance stage of liver disease and multiple organs failure. Due to the said reason, he was not



Crl.OP.No.12811 of 2024

able to appear and be present before the trial Court for hearing the judgment. Also, he is unable to seek for suspension of sentence by presenting himself before the Court. On recovery, he will be taking recourse to the procedure laid under law for seeking suspension of sentence /re-call warrant/bail as the case may be. However, his right of appeal cannot be denied or deprived for not furnishing certified copy of suspension of sentence.

5. The learned counsel for the petitioner further submits that suspension of sentence is not a *sine qua non* of for preferring an appeal and therefore, the Appellate Court refusal to entertain criminal appeal preferred under Section 374 of Cr.P.C is contrary to the procedure established under law. Hence, to meet the ends of justice, interference by the High Court in exercise of power under Section 482 of Cr.P.C is warranted.

6. Heard the learned Government Advocate (Crl.Side) for the State who enlightened about the procedures relevant for entertaining her criminal appeal against conviction.

7. Section 374 (3) of Cr.P.C empowers the Court of Session to



Crl.OP.No.12811 of 2024

entertain an appeal arising out of order of conviction on a trial held by the learned Metropolitan Magistrate and if the period of imprisonment is not more than seven years. Nowhere in the code, to prefer a criminal appeal, grant of suspension of sentence by the trial court is contemplated nor physical appearance of the appellant is contemplated. Section 382 of Cr.P.C, reads that every appeal shall be made in the form of a petition in writing presented by the appellant or his Pleader. Hence, when the physical appearance of the appellant is only an optional and right to appear through Pleader is expressly permitted under Section 382 of Cr.P.C. Hence, the Appellate Court cannot deny or refuse to entertain an appeal for want of certified copy of suspension of sentence or for want of the physical appearance of the appellant.

8. In fact while dealing with the power of the Appellate Court, the Code under Section 386, says the Appellate Court after perusing record and hearing the appellant or his Pleader, if he appears and the Public Prosecutor if he appears, and in case of Appeal under Section 377 or Section 378, the accused, if he appears, the Appellate Court may if it considers that there is no sufficient ground for interfering dismiss the appeal or may



CrI.OP.No.12811 of 2024

a) In an appeal from an order of acquittal reverse the order and direct further enquiry,

b) In an appeal from a conviction reverse, alter or order retrial.

Therefore, when the Code nowhere mandates the appearance of the appellant physically to entertain the appeal or mandates production of suspension of sentence order copy as precondition to entertain appeal against conviction. The Principal Sessions Court, Chennai ought not to have returned the appeal papers for the grounds stated. Hence, the Principal Sessions Court, Chennai is directed to entertain the appeal without insisting upon the certified copy of the suspension of sentence or the physical appearance of the appellant and proceed further in accordance with law.

10.06.2024

Vv

To

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

Dr.G.JAYACHANDRAN,J.



WEB COPY



Crl.OP.No.12811 of 2024

Vv

Crl.OP.No.12811 of 2024

10.06.2024