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Crl.OP.No.16212 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.07.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.No.16212 of 2024

Prabu

... Petitioner

Vs.

State by,
Sub Inspector of Police,
Veppankuppam Police Station,
Vellore District.
(Crime No.307 of 2017)

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to set aside the order passed in Crl.MP.No.1278 of 2024 in C.A.No.26 of 2024 order dated 10.06.2024, on the file of Court of Sessions Division of Vellore District and enlarge the petitioner on bail and pass suitable orders.

For Petitioner : Mr.S.Silambuselvan

For Respondent : Mr.S.Udaya Kumar
Government Advocate (Crl.Side)

ORDER

The petitioner herein is the accused in C.C.No.48 of 2018. He was found guilty by the trial Court by Judgment dated 18.03.2024 and



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sentenced to undergo three years imprisonment and to pay a fine of Rs.10,000/- in default one month imprisonment for the offence under Section 325 of IPC and for the offence under Section 294(b) of IPC to pay a fine of Rs.500/- in default to undergo one month imprisonment and for the offence under Section 506(i) of IPC, to pay a fine of Rs.5,000/- in default to undergo one month imprisonment. The substantive sentence was suspended for a period of 30 days to enable the petitioner to prefer an appeal.

2. The petitioner has preferred this appeal on the 30th day along with application for suspension of sentence, that application after formal scrutiny taken up for consideration on 22.04.2024. By that time since the petitioner has not reported before the learned Judicial Magistrate-III, Vellore, who has suspended the sentence for 30 days, warrant was issued by the learned Judicial Magistrate.

3. Taking note of the said fact when the lower Appellate Court considered the application for suspension of sentence, dismissed the same stating that non bailable warrant is pending against the petitioner and therefore application for suspension of sentence cannot be entertained.



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The said order of the lower Appellate Court dated 10.06.2024 is challenged in Crl.OP.No.16212 of 2024.

4. The learned counsel for the petitioner states that though the application for suspension of sentence was filed in time, it was taken up for consideration after four days. Meanwhile, the learned Magistrate has issued non bailable warrant. The said delay was not wanton and therefore the order of the Principal Sessions Judge dated 10.06.2024 needs to be set aside.

5. The learned Government Advocate (Crl.Side) appearing for the respondent police on instructions from the Investigating Officer submits that the petitioner herein though filed his application for suspension of sentence before the Sessions Court within time, he has failed to ensure that the suspension of sentence application is taken up before expiry of 30 days. In such circumstances, he should have appeared before the learned Magistrate-III, Vellore and sought for extension of time and ought to have re-called the warrant. Instead of resorting to the legal remedy available to him, he has filed the present petition under Section 482 of Cr.P.C which is not maintainable.



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6. Heard the counsel. Records perused. The Order of the learned

Principal Sessions Judge, Vellore reads as below:

“ Heard both sides. Records perused. The Judicial Magistrate No.III, Vellore suspended the sentence only for 30 days from 18.03.2024 and the appeal paper was presented before this Court on 17.04.2024 and the same was taken on file on 22.04.2024 after formal checking. Since the petitioner was convicted by the trial Court on 18.03.2024 and appeal was not filed within 30 days from the date of conviction and filed later part on 17.04.2024 and even it was not numbered due to formal checkup and finally it was numbered on 22.04.2024. In the meantime, the Judicial Magistrate No.III, Vellore issued warrant and sent a report dated 26.04.2024 itself. As per the report of the Judicial Magistrate No.III, Vellore dated 26.04.2024, it reveals that after 30 days of the initial suspension of 18.03.2024, having no representation that Court issued NBW. Since NBW is pending against the petitioner, this Court is not inclined to entertain this petition”.

7. The reasoning given by the Sessions Judge for not entertaining the suspension of sentence application is explicit and it is in consonance with the law. As pointed by the learned Government Advocate (Crl.Side) the petitioner ought to have appeared before the learned Judicial



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Magistrate who has suspended the sentence for 30 days and sought for extension of time citing the pendency of his appeal and application before the Appellate Court. Having failed to report before the learned Judicial Magistrate-III, Vellore, non bailable warrant been issued unless the warrant is re-called, suspension of sentence by the Appellate Court need not be considered.

8. Hence, this Criminal Original Petition is disposed of with a direction to the petitioner herein to surrender before the learned Judicial Magistrate-III, Vellore on or before 18.07.2024 and seek for re-call of warrant and he can thereafter move the lower Appellate Court for suspension of sentence within seven days from the date of re-call of warrant. If any application for suspension of sentence is filed, the same may be considered by the lower Appellate Court on merits and in accordance with law .

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Vv

Note: Issue Order Copy today (10.07.2024)



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To
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1. The Principal Sessions Judge, Vellore
2. The Judicial Magistrate-III, Vellore
3. The Sub Inspector of Police,
Veppankuppam Police Station,
Vellore District.
4. The Public Prosecutor,
High Court of Madras, Chennai.



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Dr.G.JAYACHANDRAN,J.

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