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Crl.O.P.No. 19641 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2024

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THE HON'BLE DR. JUSTICE G.JAYACHANDRAN

Crl.O.P.No. 19641 of 2024

And

Crl.M.P.No. 11494 of 2024

M.Gagan Bothr ... Petitioner/Respondent/Respondent

Vs.

1. JSK Film Corporation
Rep. by its prop J.Satish Kumar
47, Giriappa Road, T.Nagar, Chennai – 17.

2. J.Sathish Kumar ... Respondents/Petitioners/Appellants

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C.,
pleaded to set aside the order dated 25.07.2024 passed in Crl.M.P.No. 20422
of 2024 in Crl.A.No. 517 of 2024 in C.C.No. 1106 of 2017 by the learned
Principal Sessions Judge, City Civil Court, Chennai.

For Petitioner : Mr. M. Gagan Bothra
Party-in-person



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ORDER

This petition has been filed to challenge the order passed by the Principal Sessions Judge on 25.07.2024 suspending the sentence imposed by the trial Court in a private complaint arising out under Section 138 of the Negotiable Instrument Act.

2. The short point canvased by the petitioner is that the earlier application for suspension of sentence was dismissed by the Lower Appellate Court and the Appeal in C.A.No. 517 of 2024 was made over to the XXIst Additional Sessions Court on 24.07.2024; whileso, the second application for suspension of sentence was entertained by the Principal Sessions Judge on the next day ie., on 25.07.2024 and the impugned order has been passed.

3. On perusal of the impugned order, this Court finds that the first application for suspense of sentence in Crl.M.P.No. 19960 of 2024 was dismissed for non prosecution and in the second application for suspension of sentence, the order is passed after passing the order of made over to the



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XXIst Additional Sessions Court.

4. The petitioner submits that the Principal Sessions Judge has become *Functus Officio* on 25.07.2024 when the second application filed subsequent to the order of made over. The record indicates that the Lower Appellate Court in his adjudication dated 24.07.2024 has made over the appeal to XXIst Additional Sessions Court and also dismissed Crl.M.P.No. 19960 of 2024 on the same day ie., on 24.07.2024. The order passed in Crl.M.P.No. 2022 of 2024 dated 25.07.2024, the learned Lower Court Judge has taken note of the fact that the trial Court has suspended the sentence till 25.07.2024 and therefore, the second application filed been entertained and conditional order passed.

5. The plea of the petitioner that after made over of the main appeal, the Principal Sessions Judge become *Functus Officio* is reasonable and applicable in normal circumstances none the less in this case, what Court finds is that, the Lower Appellate Court / the Principal Judge has entertained application and pass order while the period of suspension granted by the trial Court under Section 389(3) Cr.P.C., was in force and it was the last date of the expiry of the period. Hence, the order in suspension of sentence



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application been passed with condition that the accused should deposit 10% of the total compensation

Dr.G.JAYACHANDRAN, J.

vsg

within 60 days from the date of order. By this order, the petitioner, who is the complainant, is noway prejudiced. Hence, this Court is not inclined to entertain the petition under Section 482 of Cr.P.C.

6. Accordingly, this Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petition stands closed.

14.08.2024

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