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Crl.O.P.No.22076 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2024

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

Crl.O.P.No.22076 of 2024

and

Crl.M.P.No.12588 of 2024

K.Vishnu

... Petitioner

Vs.

T.M.Thiyagarajan

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., / 528 BNSS, 2023, pleased to call for the records pertaining to order dated 08.08.2024 passed in Crl.M.P.No.22168 of 2024 in Crl.A.No.572 of 2024 pending on the file of Principal Sessions Judge, Chennai and set aside the same and pass order of suspension of sentence in S.T.C.No.3037 of 2022 dated 08.07.2024 on the file of the learned Metropolitan Magistrate Fast Track-III, Saidapet at Chennai till the disposal of the appeal in Crl.A.No.572 of 2024.

For Petitioner : Mr.N.Selvarajan

ORDER

The petitioner was found guilty by the trial Court in S.T.C.No.3037 of 2022 and sentenced him to undergo 6 months Simple Imprisonment and to pay Rs.3,00,000/- as compensation. The complaint



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arising out of offence under Section 138 of Negotiable Instruments Act, was heard by the Metropolitan Magistrate Fast Track-III, Saidapet, Chennai. The above judgment was passed on 08.07.2024. On the date of judgment, the petitioner was not present and therefore, warrant to commit the petitioner to prison was issued.

2. Aggrieved by the judgment of conviction and sentence, the petitioner has preferred appeal before the Sessions Court, Chennai. In the said appeal, he has also filed an application for suspension of sentence pending disposal of the appeal. The lower appellate Court has entertained the appeal in Crl.A.No.572 of 2024. Whereas, the application for suspension of sentence was dismissed on the ground that the conviction warrant has been issued and pending. The remedy available to the accused/petitioner/appellant is to surrender before the Court and get bail.

3. The learned counsel appearing for the petitioner submits that in an identical situation, this Court in ***M.Senthil Kumar Vs. P.Ramalingam*** has held that the surrender of the accused pending appeal is not required for suspension of sentence. However, the Sessions Court



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has failed to appreciate the dictum laid by this Court in *Senthil Kumar case*. Though the said judgment was cited before the lower appellate Court in the impugned order passed by the Principal Sessions Judge, Chennai had observed that the dictum is not applicable to the facts and circumstances of the present case.

4. This Court, on perusing the records and the judgment rendered in *Senthil Kumar case* cited supra, confirms the view expressed by the Principal Sessions Judge for the reason that the suspension of sentence in other offences is different from suspension of sentence under the Negotiable Instruments Act. Section 148 of the N.I.Act, deals with suspension of sentence pending appeal. It mandates the Court to consider the facts of the case and can suspend the sentence by imposing condition to deposit upto 20% of the compensation amount. The suspension of sentence in the absence of accused and pending conviction warrant cannot be entertained. Therefore, the order of the Sessions Court stands confirmed. It is open to the petitioner herein to surrender before the trial Court and seek for remedy. The petitioner is granted four weeks time to surrender and seek for bail. On surrender and compliance of the



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condition under Section 148 of N.I.Act, the Court below shall pass appropriate order.

5. With the above observation, this Criminal Original Petition stands dismissed. Consequently, the connected Criminal Miscellaneous Petition is closed.

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Index : Yes/No

Neutral Citation : Yes/No

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To

The Principal Sessions Judge, Chennai

Dr.G.JAYACHANDRAN,J.

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