



Crl.R.C.No.1682 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1682 of 2023
and Crl.MP.No.15967 of 2023

K.Ramalingam

... Petitioner

Vs.

1.S.Sathiyam

2.The State rep. by
The Public Prosecutor,
Puducherry.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the order dated 14.07.2023 in Crl.M.P.No.1869 of 2023 in Crl.A.No.24 of 2023 on the file of the Principal Sessions Judge, Puducherry.

For Petitioner : Mr.P.Veeraraghavan

For R1 : Mr.M.Muthukannan

For R2 : Mr.K.S.Mohandass
Public Prosecutor [Puducherry]
Assisted by Ms.N.Danalatchoumy



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ORDER

The petitioner/accused in a private complaint filed by the respondent under Section 138 of Negotiable Instruments Act in S.T.C.No.876 of 2015 was convicted by the learned Judicial magistrate No.II, Puducherry by judgment dated 30.09.2022 sentencing him to to undergo six months simple imprisonment and to pay the respondent a sum of Rs.8,00,000/- along with 9% interest as compensation. Against which, the petitioner preferred an appeal before the Sessions Judge in Crl.A.No.24 of 2023 and a petition under Section 389(3) Cr.P.C. seeking suspension of sentence imposed on the petitioner in Crl.M.P.No.1869 of 2023. The learned Principal Sessions Judge, Puducherry by order dated 14.07.2023 passed a conditional order directing the petitioner to deposit 20% of the cheque amount before the Trial Court within a period of two months and if not deposited, the petition would be dismissed automatically. Aggrieved against the same, the present revision is filed.

2.The contention of the learned counsel for the petitioner is that the



admitted case of the respondent is that he is employed in Electricity Department and he paid a sum of Rs.8,00,000/- as loan to the petitioner which is against his service and conduct rules. Further, the respondent has not shown this loan in his income tax returns. The very credibility and his source of income to pay such a huge amount as loan has not been proved. Further referring to the cross examination of the complainant, the learned counsel submitted that the respondent admitted that an unfilled cheque which was available with a third person was filled up and complaint was lodged. He further submitted that the petitioner has no transaction with the respondent and no direct liability. In such circumstances, the petitioner has got fairly a good chance in succeeding the appeal. He further referred to the judgment of the Apex Court in the case of ***Jamboo Bhandari vs. M.P. State Industrial Development Corporation Through its Authorized Officer and others*** reported in ***2023 SCC Online SC 1144***, wherein the Apex Court clearly held that not in all cases the pre-deposit in the appeal is required to be imposed and it is not a mandatory condition.

3.The learned counsel for the respondent submitted that the



respondent examined himself as P.W.1 and marked Ex.P1 to Ex.P6. He would submit that the petitioner neither examined himself as witness nor produced any document to probabilize his defence. The case has to be looked in its entirety. The petitioner not denied his signature and issuance of cheque, hence Section 139 of Negotiable Instruments Act comes into play. In view of the same, it is the duty of the petitioner to probabilize his defence and disprove that there is no liability with the respondent. He would submit that the Trial Court finding that the petitioner had not probabilize his defence had rightly convicted the petitioner. The respondent is certain that appeal would get dismissed and his only apprehension is that the appeal to be concluded within a stipulated period.

4.The learned Public Prosecutor [Puducherry] submits that the second respondent is only a formal party and only in the event of the petitioner failing to comply with the condition appropriate steps to be taken, for which they have been arrayed as party.

5.Considering the submissions made and on perusal of the materials,



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it is seen that the specific stand of the petitioner is that he has got no liability towards the respondent and in view of the decision of the Apex Court in ***Jamboo Bhandari's*** case, the conditional order passed by the Trial Court directing the petitioner to deposit 20% of the cheque amount is set aside. Further, the Trial Court is directed to hear the appeal and dispose of the same within a period of four months from the date of receipt of a copy of this order.

6.With the above direction, the Criminal Revision stands allowed.

Consequently, connected miscellaneous petition is closed.

28.02.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No
cse

Note: Issue Order Copy on 05.03.2024.



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M.NIRMAL KUMAR, J.

cse

To

- 1.The Principal Sessions Judge,
Puducherry
- 2.The Public Prosecutor,
Puducherry.

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