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Crl. O.P.No.24398 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :03.10.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.No.24398 of 2024

S.Santhosh Kumar
Petitioner

..

Vs.

V.Poornachandran
Respondent

..

Prayer: Criminal Original Petition is filed under Section 528 of BNSS of 2023, to set aside the order passed by the learned Principal Sessions Judge, Chennai in Crl.MP.No.24681 of 2024 in Crl.A.No.650 of 2024 in S.T.C.No.11941 of 2023 dated 02.09.2024.

For Petitioner : Mr.S.Ram Prasad
for Ms.E.Thenmozhi

For Respondent : Mr.T.Suresh

ORDER

This Criminal Original Petition is filed to set aside the order passed by the lower Appellate Court which has dismissed the application of the



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petitioner seeking suspension of sentence.

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2. The brief facts of the case is that the petitioner herein been sentenced and convicted for offence under Section 138 of Negotiable Instruments Act on 25.07.2024 by the learned Metropolitan Magistrate, FTC-II, Egmore @ Allikulam, Chennai. As per the judgement, the petitioner has to undergo six months simple imprisonment and to pay Rs.50,000/- as compensation to the complainant within a period of 30 days from the date of judgement, in default, to undergo two months imprisonment. The sentence was suspended for 30 days by the trial Court in exercise of power under Section 389(3) of Cr.P.C.

3. The petitioner who suppose to get suspension of sentence from the Appellate Court within 30 days ie., on or before 23.08.2024 failed to get order, since application for suspension of sentence was filed only on 28.09.2024 after curing defects. Hence, the lower Appellate Court has dismissed the application with direction to the petitioner to surrender before the trial Court and then seek for suspension of sentence.

4. The learned counsel appearing for the petitioner submits that pending disposal of the case, the petitioner has cleared the debt to the



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father of the complainant. However, the trial Court has failed to take note of the said discharge of liability and has wrongly convicted. Hence, the suspension of sentence to be ordered.

5. This Court not inclined to go into the merits of the appeal at this juncture. As far as the application for suspension of sentence, since the petitioner has filed his application after issuance of warrant, the lower Appellate Court has directed him to surrender before the trial Court and then seek for suspension of sentence.

6. In the given facts and circumstances, to mitigate the difficulty, it is appropriate to direct the petitioner herein to deposit 20% of the compensation amount ie., Rs.10,000/- in S.T.C.No.11941 of 2023 account and appear before the lower Appellate Court and seek for suspension of sentence. The time to comply with the condition i.e., to deposit 20% of the cheque amount is granted upto 17.10.2024.

7. After complying the above conditions, if any application for suspension of sentence is filed, the Appellate Court shall consider the application for suspension of sentence on the same day and pass



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appropriate order.

WEB COPY 8. With the above direction, this Criminal Original Petition is disposed of

03.10.2024

Vv

To

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



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Dr.G.JAYACHANDRAN,J.

Vv

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