



Crl.R.C.No.2255 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.2255 of 2023
and
Crl.M.P.Nos.20158 & 20159 of 2023

N.Srinivasan

... Petitioner

Vs.

N.Govindarajan

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the order dated 13.12.2023 passed by the learned District and Sessions Judge at Chennai in C.A.No.711 of 2023 dismissed the appeal for non-prosecution by confirming the judgment passed by the learned Fast Tract Court No.I, Metropolitan Magistrate (level), Allikulam, Chennai C.C.No.4876 of 2021 dated 16.10.2023 conviction and sentence to one year simple imprisonment with fine of the cheque amount as contemplated under Section 138 of NI Act and out of the said fine, complainant is entitled to get the entire fine amount towards the loss, hardship and the mental agony faced by him in proceeding this case as per Section 357(3) Cr.P.C. as compensation and the accused shall undergo one



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year simple imprisonment for the offence U/s.138 NI Act. Fine amount shall be deposited into Court by the accused calculating the cheque amount mentioned in the case within one month i.e., within appeal period in default accused shall undergo simple imprisonment and the same is imposed u/s.255(2) Cr.P.C.

For Petitioner : Mr.K.M.Balaji

ORDER

The petitioner is an accused on a private complaint filed by the respondent for the offence under Section 138 of Negotiable Instruments Act in C.C.No.4876 of 2021. The Trial Court by judgment dated 16.10.2023 convicted the petitioner and sentenced to undergo one year simple imprisonment with a fine of cheque amount i.e. Rs.8,00,000/- and the said amount to be paid as compensation.

2.The contention of the learned counsel for the petitioner is that the Trial Court suspended the sentence imposed on the petitioner in Crl.M.P.No.46639 of 2023 under Section 389(3) Cr.P.C. till 16.11.2023.



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Aggrieved against the conviction and sentence, the petitioner filed an appeal

in C.A.No.711 of 2023 along with a petition in Crl.M.P.No.29491 of 2023

under Section 389(1) Cr.P.C. to suspend the sentence before the learned

Principal Sessions Judge, Chennai. According to the petitioner, the appeal

and a petition to suspend the sentence was filed on 10.11.2023 but it was

returned for compliance of certain defects. Since it was holiday for Diwali

on 14.11.2023 and 15.11.2023, the petitioner re-presented the papers on

16.11.2023. When the suspension of sentence petition was listed before the

Lower Appellate Court on 17.11.2023, the learned Principal Sessions Judge

finding that papers were re-submitted only on 16.11.2023, the Trial Court

suspended the sentence for 30 days and wrongly construed that it got

expired on 15.11.2023 and assumed that the Trial Court would have issued

a conviction warrant against the petitioner and further records that since

warrant is pending against the accused, he has to surrender before the

Appellate Court and file a petition for suspension of sentence and then, it

will be considered by the Appellate Court. He would submit that this is not

proper since according to the petitioner till 17.11.2023 there was no

conviction warrant issued against him and further calculating the 30 days



period is also not proper and the Lower Appellate Court failed to consider the intervening holidays and dismissed the petition.

3.Learned counsel for the petitioner further submitted that when appeal in C.A.No.711 of 2023 was listed on 13.12.2023, the same was dismissed since the petitioner/accused had not surrendered before the Lower Appellate Court. He would further submit that in the order dated 13.12.2023 the Lower Appellate Court recorded that the Trial Court suspended the sentence till 16.11.2023 on the other hand in the order suspending the sentence, it was recorded as 15.11.2023. He further submitted that the appeal is a statutory right and dismissing the appeal without considering the merits would be denying the petitioner of his fundamental right under Article 21 of the Constitution of India. He would further submit that the petitioner was convicted for the offence which is bailable in nature and it is a dispute with regard to issuance of cheque and discharge of liability, for which the period for appeal is 60 days from the date of conviction, in the event of such eventuality it would be appropriate that the sentence could have been suspended by the Lower Appellate Court.



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He fairly submitted that usually 20% of the cheque amount would be made as condition pre-deposit in preferring the appeal and the petitioner is ready to pay 20% of the cheque amount [Rs.8,00,000/-].

4.Considering the submissions made and on perusal of the materials, the order passed by the Lower Appellate Court in Crl.M.P.No.29491 of 2023 dated 17.11.2023 and C.A.No.711 of 2023 dated 13.12.2023 is hereby set aside. The petitioner is directed to deposit a sum of Rs.1,60,000/- [20% out of Rs.8,00,000/-] within a period of fifteen days from the date of receipt of a copy of this order to the credit of C.C.No.4876 of 2021 on the file of the Metropolitan Magistrate, Fast Track Court No.I, Egmore @ Allikulam, Chennai. Thereafter, the petitioner's appeal and petition for suspension of sentence along with the proof of payment to be considered, Lower Appellate Court shall admit the appeal, suspend the sentence imposed on the petitioner and to dispose the appeal on its own merits and in accordance with law.



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5.With the above direction, the Criminal Revision Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

03.01.2024

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Speaking Order/Non Speaking Order

Index : Yes/No

Neutral Citation: Yes/No

Note: Issue order copy on 03.01.2024

To

1.The Metropolitan Magistrate,
Fast Track Court No.I,
Egmore @ Allikulam,
Chennai.

2.The Principal Sessions Judge,
Chennai.



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M.NIRMAL KUMAR, J.

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