



Crl.R.C.No.2273 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.01.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.2273 of 2023

and

Crl.M.P.Nos.20265 of 2023 & 96 of 2024

Krishore T.Khanna

... Petitioner

Vs.

M/s.Arvind Saraf and Sons HUF,
Rep. by Karta Mr.Arvind Saraf,
No.9, M.C.Road, Old Washermenpt,
Chennai – 600 021,
Rep. by Power Agent Mr.S.Mohan Kumar.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to set aside the order passed in C.A.No.733 of 2023 dated 12.12.2023 on the file of Principal Sessions Court, Chennai.

For Petitioner : Mr.S.Mohamed Dhurabudeen



WEB COPY



Crl.R.C.No.2273 of 2023

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.2868 of 2019 before the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai. The Trial Court by judgment dated 12.12.2023 convicted the petitioner and sentenced to undergo three months simple imprisonment with a fine of Rs.20,00,000/- and the said amount to be paid as compensation, in default to undergo a further period of three months simple imprisonment.

2.The contention of the learned counsel for the petitioner is that the Trial Court suspended the sentence imposed on the petitioner till 15.11.2023. Aggrieved against the conviction and sentence, the petitioner filed an appeal in C.A.No.733 of 2023 along with a petition in Crl.M.P.No.30577 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 15.11.2023 but it was returned for compliance of certain defects.

Thereafter, the petitioner re-presented the papers only on 22.11.2023. When the suspension of sentence petition was listed before the Lower Appellate Court on 27.11.2023, the learned Principal Sessions Judge finding that papers were re-submitted only on 22.11.2023 and the Trial Court suspended the sentence for 30 days, 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 27.11.2023 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.733 of 2023 was listed on 12.12.2023, the same was



dismissed since the petitioner/accused had not surrendered before the Lower Appellate Court. He would further submit that the appeal is a statutory right and dismissing the appeal without considering on 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. 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.20,00,000/-].

4.Considering the submissions made and on perusal of the materials, the orders passed by the Lower Appellate Court in Crl.M.P.No.30577 of 2023 dated 27.11.2023 and C.A.No.733 of 2023 dated 12.12.2023 are hereby set aside. The petitioner is directed to deposit a sum of Rs.4,00,000/- [20% out of Rs.20,00,000/-] within a period of fifteen days



Crl.R.C.No.2273 of 2023

from the date of receipt of a copy of this order to the credit of C.C.No.2868 of 2019 on the file of the Metropolitan Magistrate, Fast Track Court No.IV, George Town, 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.

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

04.01.2024

cse
Speaking Order/Non Speaking Order
Index : Yes/No
Neutral Citation: Yes/No
Note: Issue order copy on 04.01.2024



WEB COPY



Crl.R.C.No.2273 of 2023

M.NIRMAL KUMAR, J.

cse

To

- 1.The Metropolitan Magistrate,
Fast Track Court No.IV,
George Town, Chennai
- 2.The Principal Sessions Judge,
Chennai.

Crl.R.C.No.2273 of 2023

04.01.2024