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Crl.OP.No.29262 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.29262 of 2024

E.Mahalakshmi

... Petitioner

Vs.

R.Mani

... Respondents

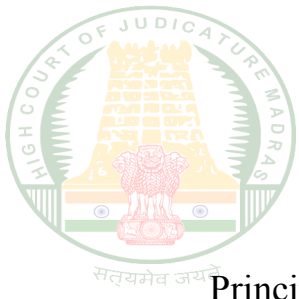
PRAYER: Criminal Original Petition is filed under Section 528 of BNSS Act 2023, to set aside the order dated 03.10.2024 passed in M.P.No.1 of 2024 in Crl.A.No.235 of 2024 on the file of the Principal Sessions Judge at Tiruppur against conviction order dated 14.08.2024 in S.T.C.159/2018 on the file of Fast Track Magistrate at Tiruppur.

For Petitioner : Mr.N.Elayaraja

For Respondent : Mr.A.Saravanan

ORDER

This petition has been filed to set aside the order dated 03.10.2024 passed in M.P.No.1 of 2024 in Crl.A.No.235 of 2024 on the file of the



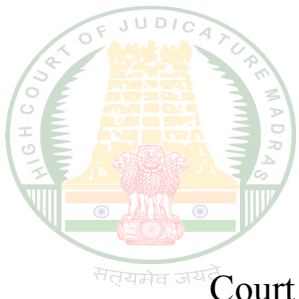
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Principal Sessions Judge at Tiruppur against conviction order dated 14.08.2024 in S.T.C.No.159/2018 on the file of Fast Track Court, Tiruppur.

2. The petitioner is an accused in the complaint lodged by the respondent for the offence under Section 138 of Negotiable Instruments Act in S.T.C.No.159 of 2019. After full fledged trial, the trial Court has convicted the petitioner for the offence under Section 138 of Negotiable Instruments Act. However, on the date of judgement, the petitioner was not present due to his illness and filed an application under Section 317 of Cr.P.C to condone his presence. However, the said application was dismissed and the trial Court issued non bailable warrant.

3. Aggrieved against the judgment, the petitioner has preferred an appeal in CrI.A.No.235 of 2024 and also filed an application for suspending the sentence in M.P.No.1 of 2024. However, the trial Court has dismissed the petition seeking suspension of sentence on the ground that already non bailable warrant is pending as against the petitioner issued by the trial Court. When non bailable warrant is pending as against the petitioner, he is not entitled to any relief. Therefore, the Appellate Court has rightly dismissed the application to suspend the sentence. This



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Court finds no infirmity or illegality in the order passed by the Appellate Court. Hence, this Criminal Original Petition is dismissed.

4. However, the petitioner is at liberty to file an application to recall non bailable warrant and on receipt of such application, the trial Court is directed to dispose the same on the date of his surrender. It is needless to say that the Court below while disposing the bail petition shall look into the gravity of the offence, previous antecedents of the petitioners and pass orders. Mere direction issued by this Court to consider the bail petition on the same day does not amount to consider it favourably. It is made clear that the trial Court should consider the application to recall non bailable warrant on merits and in accordance with law.

5. The learned counsel appearing for the petitioner also submitted that he is ready and willing to pay the cheque amount. If the petitioner pays the entire cheque amount to the defacto complainant, the petitioner is at liberty to file a petition to compound the offence and on such application, the trial Court is also directed to consider the same and pass appropriate order in accordance with law within a period of two weeks from the date of receipt of a copy of this order.



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6. With the above direction, this Criminal Original Petition is dismissed.

20.03.2024

Vv

To

1. The Principal Sessions Judge, Tiruppur
2. The Fast Track Magistrate, Tiruppur
3. The Public Prosecutor, Madras High Court, Chennai.

G.K.ILANTHIRAIYAN, J.

Vv



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