



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16-04-2026

CORAM

THE HONOURABLE MR JUSTICE M. NIRMAL KUMAR

CRL OP No. 9485 of 2026

and

CRL MP No.6723 of 2026

Sivanandan

Petitioner(s)

Vs

The State Rep By Its
The Sub Inspector of Police,
Tirupattur Taluk Police Station,
Tirupattur District.
Crime No.415/2015

Respondent(s)

PRAYER: Criminal Original Petition filed under Section 528 of BNSS, 2023,
to set aside the order passed by the Learned Court of Sessions Division of
Tirupattur, Tirupattur District in CrI.M.P.No.1244 of 2025 in CrI.A.No.12/2025
dated 08.10.2025.

For Petitioner(s): Mr.E.Kannadasan

For Respondent(s): M/s.R.Vinoth Raja
Government Advocate (CrI.Side)



ORDER

This Criminal Original Petition has been filed to set aside the order dated 08.10.2025 in Crl.M.P.No.1244 of 2025 in Crl.A.No.12/2025 passed by the learned Court of Sessions Division of Tirupattur, Tirupattur District.

2. Facts in brief:

2.1. The petitioner/accused was convicted for the offence under 294(b) of I.P.C in C.C.No.106 of 2020 on the file of the learned Judicial Magistrate No.II, Tirupattur, Tirupattur District, and sentenced to undergo simple imprisonment of 2 months and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for two weeks and convicted for the offence under Section 325 of I.P.C, and sentence to undergo imprisonment for six months and to pay a fine of Rs.5000/- in default to undergo simple imprisonment for three weeks and the sentences were ordered run concurrently.

2.2. Aggrieved by the same, the petitioner preferred an appeal before the Court of Sessions Division of Tirupattur, Tirupattur District in Crl.A.No.12 of 2025 along with Crl.M.P.No.1244 of 2025, seeking suspension of sentence, pending disposal of the appeal and the appellate Court, vide order dated 08.10.2025, dismissed the suspension of sentence petition based on the report of the lower Court that NBW was issued against the petitioner in C.C.No.106 of



2020 in Crl.M.P.No.1571 of 2025 dated 18.06.2025. Further, neither the warrant was recalled nor the accused surrendered before the Court as on date.

Challenging the order dated 08.10.2025 made in Crl.M.P.No.1244 of 2025, the petitioner has filed the present petition.

3. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the respondent and also perused the materials available on record.

4. Considering the submissions made by the learned counsel on either side and upon perusal of the materials available on record, it is seen that the petitioner filed a petition seeking suspension of sentence in Crl.M.P.No.1244 of 2025 in Crl.A.No.12 of 2025 under Section 389(1) Cr.P.C., the appellate Court admitted the appeal but did not entertain the suspension of sentence petition for the reason that the petitioner did not appear before the trial Court on the date of pronouncing the judgment and that NBW was issued against the petitioner. It is submitted that the criminal appeal is likely to be listed before the appellate Court on 03.06.2026. The petitioner is directed to appear before the appellate Court on 03.06.2026 and file a petition for suspension of sentence. Further, it is not a condition precedent that suspension of sentence under Section 389(1) Cr.P.C., has to be preceded by suspension of sentence under Section 389(3) of



5. In view of the above, the learned Sessions Division Judge of Tirupattur, Tirupattur District, shall entertain the petition filed by the petitioner under Section 389(1) Cr.P.C., and the Appellate Court shall pass orders on the same on its own merits and in accordance with law, in the absence of the petitioner and issuance of NBW on his absence will have no bearing once the appeal has been filed.

6. With the above directions, this Criminal Original Petition is disposed of. Consequently, connected Miscellaneous Petition is closed.

16-04-2026

Jd

Neutral Citation: Yes/No

To

1. The Sessions Judge, Tirupattur, Tirupattur District
2. The Judicial Magistrate No.II, Tirupattur.



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M.NIRMAL KUMAR J.
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