

Easwaramurthy Vs. N. Krishnaswamy

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Court : Chennai

Decided On : Jun-14-2006

Reported in : I(2007)BC260; 2006CriLJ4105

Judge : K.N. Basha, J.

Acts : Negotiable Instruments Act - Sections 138; Essential Commodity Act; Patna High Court Rules; Code of Criminal Procedure (CrPC) , 1974 - Sections 397, 397(1), 399 and 401

Appeal No. : Crl. M.P. No. 3498 of 2006 in Cri. R.C. No. 573 of 2006

Appellant : Easwaramurthy

Respondent : N. Krishnaswamy

Advocate for Pet/Ap. : Deivasigamani, Adv.

Judgement :

K.N. Basha, J.

1. The petitioner herein has come forward with the Criminal Revision No. 573 of 2006, challenging the conviction and sentence to undergo one year simple imprisonment and a fine of Rs. 5,000/- in default to undergo S.I. for six months for the offence Under Section 138 of N.I. Act imposed on him by the learned Judicial Magistrate No. II, Pollachi in C.C. No. 73 of 2002 dated 5.7.2005 and modifying

the sentence into one of three months SI and confirming the fine of Rs. 5,000/- in C.A. No. 340 of 2005 on the file of Additional District and Sessions Judge and Presiding Officer, Special Judge for EC Act Cases at Coimbatore dated 21.4.2006.

2. The learned Counsel appearing for the petitioner/revision petitioner has contended that in view of various difficulties and circumstances, the revision petitioner was not able to surrender before the Court below and thereafter remanded to the concerned prison on the ground of confirmation of his conviction and sentence passed by the trial Court.

3. It is also contended by the learned Counsel for the revision petitioner that in view of the specific provision Under Section 397 Clause (1) of Cr.P.C. the revision petitioner, who has suffered concurrent finding of conviction and sentence, need not surrender and undergo the imprisonment for seeking the relief of suspension of sentence as imposed by the Court below.

4. In respect of the above said contentions raised by the learned Counsel for the petitioner, it is relevant to note the settled principles of law laid down by the Hon'ble Supreme Court of India reported in *Bihari Prasad Singh v. State of Bihar* 2000 SCC (Cri) 1380 : AIR 1999 SCW 4926. In the above said decision. Their Lordships have held as follows (paras 2 and-3):

The only question that requires consideration in the present case is whether the High Court while exercising its revisional Jurisdiction can refuse to hear or entertain the matter on the ground that the accused has not surrendered. Under the provisions of the Criminal Procedure there is no such requirement though many High Courts in this country have made such provision in the respective rules of the High Courts. But it is stated to us that there is no such rule in the Patna High Rules. In that view of the matter, the High Court was not justified in rejecting the application for revision solely on the ground that the accused has not surrendered.

5. In respect of the same question of law viz., whether the accused concerned in the revision against conviction, has to surrender and thereafter only seek the relief of suspension of sentence, the Hon'ble Mr. Justice Khalid (as he then was) has held in the decision reported in *Ibrahim v. State of Kerala* 1979 KLT 857 as

follows:

2. Sections 397, 399 and 401 of the Code deal with the powers of revision. Under Section 397, revisions can be filed both before the High Court and the Sessions Judge. The jurisdiction of the revisional Court to pass interim orders Under Section 397(1) is as follows:

(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order, recorded or passed, and as to the regularity of any proceedings of such Inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record

The words 'direct that the execution of any sentence or order be suspended' have to be read dis-junctively from the words and if the accused is in confinement that he be released on bail or on his bond pending the examination of the record. Suspension of the execution of any sentence or order postulates that the petitioner is not in confinement. This Section gives jurisdiction to the revisional Court to suspend sentence even though the petitioner is not in confinement. The question of releasing Him on bail arises only when he is in confinement. Therefore, when the accused in confinement makes an application for suspension of sentence or order, the Court should not, only order suspension of the sentence or order but order his release on bail also. Not so, when he is not in confinement. This Section clearly recognizes the difference between a case where an accused is in confinement and when not in confinement. Thus, it will not be proper for the revisional Court to insist upon an accused to be remanded to confinement before his sentence can be suspended, for, that will be acting against the clear and express provisions contained in Section 397(1) of the Code, quoted above, enabling the revisional Court to exercise the twin jurisdiction vested in it in cases where the accused is in confinement and not in confinement. The matter becomes clear when the other sections of the Code are also considered....

8. ...the revisional Court need not insist upon the confinement of the accused before ordering suspension of sentence or order passed against him. If the accused is in confinement, the revisional Court will have to direct his release on bail; if he is not in confinement, the revisional Court need only suspend the execution of the sentence or order, either on the bond already executed or as directed by the revisional Court. Since the relevant provisions of the Code have clearly delineated the situation where the accuser's presence is necessary, and since Section 397 is silent about the custody or confinement of the accused, the revisional Court need not insist upon bringing the accused to confinement before exercising the powers Under Section 397(1) of the Code.

6. In view of the abovesaid decision of the Hon'ble Supreme Court as well as the decision rendered by his Lordship Justice Khalid (as he then was), it is well settled that in respect of the revision against conviction and sentence, for granting the relief of suspension of sentence, the accused need not surrender and undergo confinement and filing revision without surrendering and confinement is well within the power contemplated Under Section 397(1) of Cr.P.C. as Section 397(1) Cr.P.C. itself is very clear that there is absolutely no ambiguity as the reading of the words 'direct that execution of any sentence or order be suspended.'

7. In view of the above, I am of the considered view that in these matters, more particularly in respect of any revision against conviction that the accused need not surrender and undergo confinement for seeking the relief of suspension of sentence pending disposal of the criminal revision. The Courts are coming across the difficulties of the accused and more particularly in the cases Under Section 138 of N.I. Act and other compoundable offences where there is possibility of compounding the offence within a short period and in such event, insisting upon the accused concerned to undergo the confinement for seeking the relief of suspension of sentence, may result in miscarriage of Justice.

8. However, the Revisional Court may decline to exercise the power Under Section 397(1) Cr.P.C. to suspend the sentence imposed on the accused, considering the merits of each case, in respect of seriousness and gravity of the offence and also the antecedents of the accused coupled with the clinching

materials available on record against the accused.

9. In view of the aforesaid discussion and in view of the settled principles of law by the Hon'ble Supreme Court as well as by His Lordship Justice Khalid (as he then was) as stated above, I am of the considered view, that the revision petitioner herein is entitled to the relief of grant of suspension of sentence to undergo one year simple Imprisonment and a fine of Rs. 5,000/- in default to undergo SI for six months for the offence Under Section 138 of N.I. Act imposed on him by the learned Judicial Magistrate No. II, Pollachi in C.C. No. 73 of 2002 dated 5.7.2005 and modifying the sentence into one of three months SI and confirming the fine of Rs. 5,000/- in C.A. No. 340 of 2005 on the file of Additional District and Sessions Judge and Presiding Officer, Special Judge for EC Act Cases at Coimbatore dated 22.4.2006.

10. Therefore, the petitioner's sentence viz., to undergo one year simple imprisonment and a fine of Rs. 5,000/- in default to undergo SI for six months for the offence Under Section 138 of N.I. Act imposed on him by the learned Judicial Magistrate No. II, Pollachi in C.C. No. 73 of 2002 dated 5.7.2005 and modifying the sentence into one of three months SI and confirming the fine of Rs. 5,000/- in C.A. No. 340 of 2005 on the file of Additional District and Sessions Judge and Presiding Officer, special Judge for EC Act Cases at Coimbatore dated 21.4.2006, is suspended on his executing a bond for a sum of Rs. 10,000/- (rupees ten thousand only) with two sureties each for a like sum to the satisfaction of learned Judicial Magistrate No. 2, Pollachi subject to the condition that the petitioner shall appear before the said Court on the first working day of every month pending the revision. The petitioner shall execute the bond within a period of three weeks from the date of receipt of copy of this order, failing which this order shall stand automatically cancelled. Accordingly, this CrI. M.P. No. 3498 of 2006 is disposed of.