

*CrIMP(MD)No.13092 of 2026
in CrI A(MD)No.766 of 2026*

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2026

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

CrIMP(MD)No.13092 of 2026
in
CrI A(MD)No.766 of 2026

Samikannu

...Petitioner /sole accused

Vs

The State rep by
the Inspector of Police,
Vigilance and Anti Corruption Wing,
Tiruchirappalli,
[Crime No.33 of 2010]

... Respondent

PRAYER: Petition filed under Section 430(1) of Bharatiya Nagarik Suraksha Sanhita, to suspend the sentence of imprisonment passed in SplSC.No.74 of 2012 on the file of the Special Judge for Prevention of Corruption Act Cases, Tiruchirappalli dated 29.05.2026 and enlarge the petitioner on bail till the disposal of the criminal appeal.

For Petitioner : Mr.V.Muthu Kamatchi
For Respondent : Mr.Robinson,
Government Advocate



*CrIMP(MD)No.13092 of 2026
in CrI(A)(MD)No.766 of 2026*

ORDER

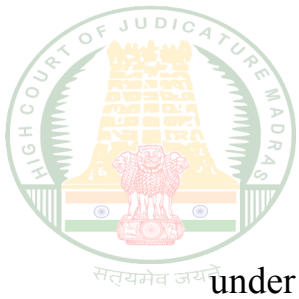
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The petitioner is the sole accused in SplSC.No.74 of 2012 on the file of the Special Judge for Prevention of Corruption Act Cases, Tiruchirappalli. He was found guilty, convicted and sentenced as under:

Sl. No	Offence	Punishment	Fine (in Rs)	default class
1	Section 7 of the Prevention of Corruption Act	2 years of imprisonment	5,000	3 months simple imprisonment
2	Section 13(2) r/w Section 13(1)(d) of Prevention of Corruption Act	2 years of imprisonment	5,000	3 months simple imprisonment

As against the conviction and sentence, the petitioner has filed an appeal before this court in CrI(A)(MD)No.766 of 2026 and the same has been admitted by this court. The petitioner along with the appeal has moved this petition seeking to suspend the sentence imposed by the trial court.

2.The petitioner has stated in the petition that he is not in jail and he claims that the sentence imposed by the trial court has been suspended by the trial court in CrMP.No.237 of 2026 in SplSC.No.74 of 2012 by order dated 29.05.2026. The sentence was suspended by the trial court



*CrIMP(MD)No.13092 of 2026
in CrA(MD)No.766 of 2026*

WEB COPY

under Section 389(3) of the CrPC to enable the petitioner to file an appeal before this court, for a period of 30 days up-to 28.06.2026. The petitioner has moved this petition on 29.06.2026 and the same was listed for hearing on 07.07.2026.

3.The learned Government Counsel submits that the trial court has suspended the sentence by order dated 29.05.2026 for a period of 30 days and the petitioner has not surrendered on expiry of the order passed by the trial court.

4.The learned counsel for the petitioner disputed the above submissions and submits that the trial court in CrIMP.No.296 of 2026 by order dated 29.06.2026 has extended the suspension of sentence up-to 15.07.2026 and therefore, the period of suspension according to him has been extended and therefore there is no need of surrendering.

5.The learned Government Counsel opposed this contention and submits that the trial court cannot extend the period of suspension under Section 389(3) of CrPC beyond a period of 30 days. He further submits



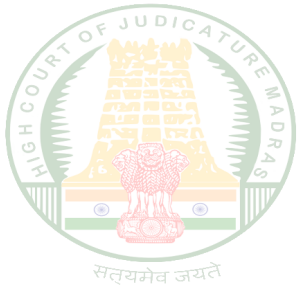
CrIMP(MD)No.13092 of 2026
in CrIA(MD)No.766 of 2026

WEB COPY

that once the power of suspending the sentence has been exercised by the trial court under Section 389(3) CrPC, the trial court cannot pass further orders to extend the suspension of sentence. According to him, the petitioner has filed an appeal before this Court on 29.06.2026 and the same has been numbered and listed on 02.07.2026. When the appeal is pending before this court, the petitioner has been simultaneously granted the relief in a mechanical manner by the trial court by extending the suspension of sentence till 15.07.2026. He contends that the order of the trial court extending the suspension of sentence till 15.07.2026 is not valid and therefore, the petitioner is not entitled for suspension of sentence without surrendering before the court.

6.The learned counsel for the petitioner has produced the subsequent order passed by the trial court in CrIMP.No.296 of 2026, dated 29.06.2026 and the same reads as under:

“Both side heard. The reason stated in the petition is accepted circumstances of this petition and interest of justice suspend of set off time is extension till 15.07.2026. Hence this petition is allowed.”



*CrIMP(MD)No.13092 of 2026
in CrIa(MD)No.766 of 2026*

WEB COPY

7. Since the learned Government Counsel has raised a preliminary objection to this petition, this court is inclined to examine the power of the trial court to extend the period of suspension, when the power under Section 389(3) has already been exercised by the trial court.

8. The petitioner has been convicted by the Special Court for Prevention of Corruption Act Cases, Tiruchirappalli in SplSC.No.74 of 2012 on 29.05.2026 as stated supra. As against the orders of the Special Court for Prevention of Corruption Act Cases, Tiruchirappalli, appeal lies before this court. Accordingly, the appeal has been filed before this court and it has been admitted by this court on 06.07.2026. The appellate court is having powers under Section 389(1) of CrPC to suspend the sentence pending the appeal for reasons to be recorded in writing. The trial court is empowered under Section 389 (3) of CrPC to release the convicted person in certain circumstances for a limited period to afford sufficient time to enable such a person to present appeal and for obtaining orders of the appellate court under 389(1) CrPC. Section 389 of the CrPC is extracted hereunder for reference:



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CrIMP(MD)No.13092 of 2026
in CrI(MD)No.766 of 2026

“Section 389 in The Code of Criminal Procedure, 1973-

(1) Pending any appeal by a convicted person, the Appellate Court may, for reasons to be recorded by it in writing, order that the execution of the sentence or order appealed against be suspended and, also, if he is in confinement, that he be released on bail, or on his own bond.

Provided that the Appellate Court shall, before releasing on bail or on his own bond a convicted person who is convicted of an offence punishable with death or imprisonment for life or imprisonment for a term of not less than ten years, shall give opportunity to the Public Prosecutor for showing cause in writing against such release:

Provided further that in cases where a convicted person is released on bail it shall be open to the Public Prosecutor to file an application for the cancellation of the bail.

(2)The power conferred by this section on an Appellate Court may be exercised also by the High Court in the case of an appeal by a convicted person to a Court subordinate thereto.

(3)Where the convicted person satisfies the Court by which he is convicted that he intends to present an appeal, the Court shall,-

(i)where such person, being on bail, is sentenced to imprisonment for a term not exceeding three years; or

(ii)where the offence of which such person has been



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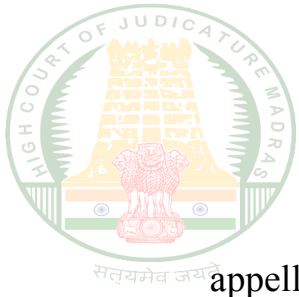
CrIMP(MD)No.13092 of 2026
in CrIA(MD)No.766 of 2026

convicted is bailable one, and he is on bail, order that the convicted person be released on bail, unless there are special reasons for refusing bail, for such period as will afford sufficient time to present the appeal and obtain the orders of the Appellate Court under sub-section (1); and the sentence of imprisonment shall, so long as he is so released on bail, be deemed to be suspended.”

9. In ***Mammootty And Ors. vs. Food Inspector [AIR 1987 Kerala 270]***, a Full Bench of the Kerala High Court explained the scope of Section 389 CrPc and the relevant portion is extracted hereunder:

“13.....Sub-sections (1) and (3) of Section 389 are part of a scheme; subsection (1) enables the appellate court to suspend sentence and grant bail in all cases, though for reasons to be recorded in writing while Sub-section (3) confers on the convicting court a limited power in a narrower field to grant bail to a convicted person to afford him an opportunity to present an appeal and obtain orders of the Appellate Court.”

10. Therefore, the power of the trial court under Section 389(3) CrPC operates on a narrower field and only to afford sufficient time to the convicted person to present the appeal and to obtain orders of the



CrIMP(MD)No.13092 of 2026
in CrIA(MD)No.766 of 2026

WEB COPY

appellate court under Section 389(1) of CrPC. This power has already been exercised by the trial court in CrMP.No.237 of 2026 by its order dated 29.05.2026 wherein it has suspended the sentence for 30 days enabling the appellant to approach the appellate court and to obtain bail. Section 389(3) CrPC does not provide that the trial court can extend this period of suspension of sentence. Therefore, when the trial court has already exhausted the statutory mandate under Section 389(3) CrPC, it cannot extend the same by entertaining further application.

11.It is relevant to note that as per Section 362 CrPC, once a criminal court has signed its judgment or final order, it becomes *functus officio* and has no scope to revisit the matter except for the correction of clerical or arithmetical errors. Therefore, the second order passed by the trial court in CrMP No.296 of 2026 is also barred under Section 362 of CrPC. Section 389 (3) of CrPC does not specify the time limit for suspending the sentence and allows the trial court to suspend the sentence for such period as will afford sufficient time to present the appeal. No doubt, the limitation period for filing an appeal before this court is 60 days from the date of conviction. However, when the trial



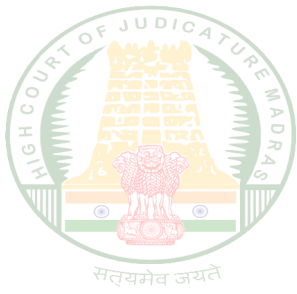
CrIMP(MD)No.13092 of 2026
in CrA(MD)No.766 of 2026

WEB COPY

court has already suspended the sentence for a period of 30 days time by way of its initial order, this court is of the opinion that it cannot entertain subsequent application when it has already become *functus officio*.

12.It is also relevant to consider the decision of this court in ***P.Ramakrishnan vs. Rani Rambai [2012 (1) MWN (Cr) (DCC) 97 (Mad)]***. In this case, the convicted person has approached the trial court seeking extension of suspension of sentence without obtaining bail from the appellate court and the same was returned by the trial court that the convict cannot file successive applications seeking to extend the period of suspension. The convicted person has challenged the same in *P.Ramakrishnan (referred supra)* and this court held that the petition filed for extension of suspension of sentence is misconceived and it amounts to abuse of process of the court. The relevant portion is extracted as under:

“7. The narration of above facts would clearly go to show that the present Petition is not only highly misconceived but also it amounts to a clear abuse of process of Court. Under Section 389(3) Cr.P.C, the trial Court has got power to suspend the sentence for a maximum period within which an appeal is



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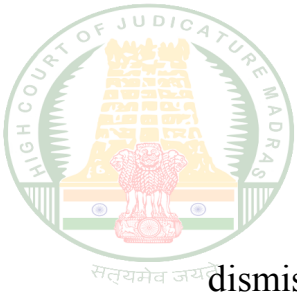


CrIMP(MD)No.13092 of 2026
in CrI(MD)No.766 of 2026

to be preferred by the convict as per the provisions of the Limitation Act. The learned Magistrate lacks jurisdiction to grant suspension beyond 30 days from the date of imposition of sentence. Therefore, the learned Magistrate was right in returning the petition filed by the petitioner seeking extension of suspension of sentence. It needs to be mentioned that the date of conviction is on 19.10.2011 and the sentence was suspended rightly by the learned Magistrate till 18.11.2011.”

13.This ratio has been followed in another decision of this court in ***Velusamy Vs. Shanmugam and another [CrIOP(MD)No.14400 of 2016 dated 11.08.2016]***. Therefore, this court is of the view that the trial court has exhausted its statutory mandate and became *functus officio* after passing the order dated 29.05.2026 in CrMP.No.237 of 2026 and the subsequent order passed in CrIMP.No.296 of 2026 on 29.06.2026 extending the period of suspension till 15.07.2026 is not proper and the same is barred under Section 362 CrPC.

14.For the above reasons, this court is not inclined to accept the contention of the petitioner that the suspension of sentence has been extended by the trial court till 15.07.2026. Therefore, this petition is



*CrIMP(MD)No.13092 of 2026
in CrI(MD)No.766 of 2026*

WEB COPY

dismissed with a direction to the petitioner to surrender before the trial court and thereafter file an application before this court under Section 389(1) CrPC.

22.07.2026

DSK

Note: Issue order copy today

To

- 1.The Special Judge for
Prevention of Corruption Act Cases,
Tiruchirappalli.
- 2.The Inspector of Police,
Vigilance and Anti Corruption Wing,
Tiruchirappalli.

Copy to

The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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*CrIMP(MD)No.13092 of 2026
in CrI A(MD)No.766 of 2026*

B.PUGALENDHI.J.,

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**CrIMP(MD)No.13092 of 2026 in
CrI A(MD)No.766 of 2026**

22.07.2026