

Crl.M.P.No.258 of 2016

in

Crl.R.C.No.43 of 2016

R.SUBBIAH, J

Petitioner was convicted for offence under Section 138 of Negotiable Instruments Act and sentenced to undergo 10 months S.I. and to pay fine of Rs.3,000/- i/d 1 month S.I. by learned Judicial Magistrate, FTC (At Magistrate Level-2) Coimbatore under judgment dated 17.02.2015 in C.C.No.287 of 2013. There against, petitioner preferred C.A.No.59 of 2015 on the file of learned IVth Additional District and Sessions Judge, Coimabtoe and the same was dismissed under judgment dated 07.09.2015. Hence, petitioner seeks suspension of sentence.

2. Learned counsel for petitioner submits that there are several infirmities and inconsistencies in the prosecution case. It is contended that there are contradictions in material particulars in the evidence of the prosecution witnesses. It is further represented that there is no precondition requiring the petitioner's surrender or being in confinement in availing the relief of suspension of sentence under Section 397 Cr.P.C. in exercise of revisional powers by this Court. The decisions of the Honourable Apex Court in

BIHARI PRASAD SINGH VS STATE OF BIHAR AND ANOTHER (2000 SCC (Cri) 1380) and that of the **IBRAHIM VS STATE OF KERALA (1979 KLT 857)** are relied upon in this regard. Learned counsel further submits that the petitioner has paid the fine amount.

3. The above decisions have been relied upon time and again by this Court towards holding that in moving a revision against conviction, the accused need not surrender and undergo confinement before seeking the relief of suspension of sentence pending disposal of the Criminal Revision.

4. Taking into consideration the submissions of learned counsel for petitioner and that the revision is not likely to be taken up for final hearing in the near future, this Court is of the view that the petitioner herein may be granted the relief of suspension of sentence.

Accordingly, the substantive sentence of imprisonment alone is suspended and petitioner is directed to be enlarged on bail on condition that petitioner shall execute a bond in a sum of Rs.10,000/- each (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the

learned Judicial Magistrate, FTC (At Magistrate Level-2) Coimbatore and on further condition that petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m. pending revision.

11.01.2016

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Petitioner who stands convicted for offence under section 138 of Negotiable Instruments Act seeks exemption from surrendering to custody as a pre condition for consideration of his bail application moved in the revision case preferred by him before this Court.

2. Considering the facts and circumstances of the case and the earlier decision of this Court in the case of ***Easwaramurthy Vs. N.Krishnaswamy (2006) CRI.L.J.4105*** which in turn relied on the decision of the Apex Court in ***Bihari Prasad Singh Vs. State of Bihar (2000) SCC (Cri) 1380***, this Court considers it appropriate to allow this petition as prayed for. Accordingly, this petitioner shall not be required to surrender before learned Judicial Magistrate, FTC (At Magistrate Level-2) Coimbatore, in C.C.No.287 of 2013, pending disposal of the main revision.

11.01.2016
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