



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Twenty Ninth day of February Two Thousand Sixteen

PRESENT

The Hon`ble Mr Justice V.S.RAVI

CRL MP(MD) Nos.1808 and 1809 of 2016
IN
CRL RC(MD) No.110 of 2016

E.THANGAMANI ... PETITIONER/ PETITIONER/
APPELLANT/ACCISED IN BOTH THE PETITIONS

Vs

K.S.VELUSAMY (DIED)
V. SURESH KUMAR,
S/O.K.S.VELUCHAMY ... RESPONDENT/RESPONDENT/
RESPONDENT/COMPLAINANT IN BOTH THE PETITIONS

Prayer in CRL MP(MD). 1808/ 2016 :

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed on petitioner's by the Honourable Principal Sessions Judge, Srivilliputhur made in C.A. No.107 of 2013 dated 25.1.2016 confirming the sentence imposed on the petitioner in STC. No.1 of 2012 dated 19.7.2013 passed by the Learned Fast Track Judicial Magistrate, Srivilliputhur pending disposal of the above Criminal Revision petition.

Prayer in CRL MP(MD). 1809/ 2016 :

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to pass an order exempting the petitioner from being surrendered before the learned Fast Track Judicial Magistrate, Srivilliputhur in connected with sentence imposed on petitioner's by the Learned Principal Sessions Judge, Srivilliputhur by means of judgement dated 25.1.2016 made in Crl.A.No.107 of 2013 confirming the conviction and sentence imposed by the Learned Fast Track Judicial Magistrate, Srivilliputhur made in STC. No.1 of 2012 dated 19.7.2013 pending disposal of the above Criminal Revision Petition.

Order : These petitions coming on for orders upon perusing the petitions filed in support thereof and upon hearing the arguments of M/S S.PALANIVELAYUTHAM, Advocate for the petitioner the court made the following order:-

Crl.M.P.(MD) No.1809 of 2016 is filed by the petitioner/revision petitioner/sole accused to suspend the sentence imposed on him in C.A.No.107 of 2013 dated 25.01.2016 by the learned Principal Sessions Judge, Srivilliputhur, confirming the judgment dated 19.07.2013 made in S.T.C.No.1 of 2012 passed by the learned



Fast Track Judicial Magistrate, Srivilliputhur, pending disposal of the revision.

2.It is specifically stated in the affidavit enclosed with the petition that the petitioner has been convicted on 19.07.2013 for the offence under Section 138 of the Negotiable Instrument Act and sentenced to undergo six months simple imprisonment and to pay a fine of Rs.5,000/- in default to undergo 2 months simple imprisonment. It is also stated that the said judgment has been confirmed by the learned Principal Sessions Judge in C.A.No.107 of 2013.

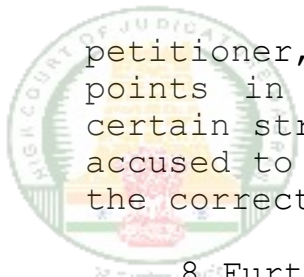
3.It is further submitted in the affidavit that the petitioner/revision petitioner/Accused has the fair chance of success in the revision and there is prima facie case in her favour and due to her family circumstances and her livelihood, she is not in a position to surrender before the Court below.

4.The petitioner has filed another application in CrI.M.P.(MD) No.1809 of 2016 to pass an order exempting the petitioner/revision petitioner/Accused from surrendering before the lower Court in connection with the sentence imposed on him in C.A.No.107 of 2013 dated 25.01.2016 by the learned Principal Sessions Judge, Srivilliputhur, confirming the judgment dated 19.07.2013 made in S.T.C.No.1 of 2012 passed by the learned Fast Track Judicial Magistrate, Srivilliputhur, pending disposal of the criminal revision.

5.It is specifically pointed out in the grounds of revision that the Courts below have failed to appreciate the fact that the initial burden caused on the accused sofar as the liabilities is concerned is strongly denied by issuing a reply notice and on the basis of the legally sustainable materials. But, the complainant has not proved his case in the manner known to law and hence the judgment of the Courts below is erroneous and illegal.

6.It is further stated that the complainant has not come forward with definite case and he has not stated the entire facts either in the legal notice or in the complaint and he has narrated the facts only in the proof affidavit and based on the evidence, the trial Court convicted the accused. The Courts below have failed to consider the fact that the cheque has been presented on 11.10.2011 and returned on the same day and the legal notice has been issued by the complaint on 18.10.2011 and the same has been returned on 20.10.2011 and against the legal notice has been sent on 04.11.2011 and the same has been received on 08.11.2011. Hence, the complaint has to be filed on or before 02.12.2011. However, the present complaint has been filed on 09.12.2011 beyond the period of limitation and hence, the conviction passed by the Courts below are sustainable in law.

7.On a Perusal of the materials available on records, it is found that there are certain force in the points raised in the grounds of revision. From the submissions made on behalf of the



petitioner, this Court finds that there are substantial and arguable points in the present case. Further, it is also seen that if certain stringent conditions are imposed, there is no chance for the accused to abscond. Further, after hearing the main revision alone, the correct and proper finding in the main case can be given.

8. Further, it is seen that various points raised in the grounds of revision require an indepth/threadbare examination at the time of final hearing of the main revision and also on going through the various grounds raised in the grounds of revision at this stage, this Court, to prevent aberration of justice, suspends the sentence pending disposal of the criminal revision with the following conditions:

i) the petitioner/revision petitioner/Accused shall be released on bail on her executing a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties each for a likesum to the satisfaction of the Fast Track Judicial Magistrate, Srivilliputhur.

ii) the petitioner/Accused shall appear before the said Court once in a month viz., first working day of every month until further orders, failing which the said Court is directed to inform about the details of failure committed by the petitioner in complying with the said conditions, to the Registry of this Court, forthwith.

iii) the petitioner/Accused shall furnish her present full details of her residential address along with the copies of the family ration card/Aadhar Card/voter ID card issued by the Election Commission of India and also phone numbers (mobile/landline) if any to the said Court in the form of an affidavit, after serving an advance true copy of the same to the respondent; and

iv) on receipt of the true copy of the said affidavit, the respondent is directed to verify the veracity of the particulars given in the said affidavit and also liberty is granted to respondent to take appropriate follow up action, in accordance with law.

9. For the above mentioned facts and circumstances, CrI.M.P. (MD) No.1809 of 2016 is allowed and the petitioner/revision petitioner/Accused is exempted from surrendering before the lower Court in connection with the sentence imposed on him in C.A.No.107 of 2013 dated 25.01.2016 by the learned Principal Sessions Judge, Srivilliputhur, confirming the judgment dated 19.07.2013 made in S.T.C.No.1 of 2012 passed by the learned Fast Track Judicial Magistrate, Srivilliputhur, pending disposal of the criminal revision.

sd/-

29/02/2016

/ TRUE COPY /



TO

1 THE PRINCIPAL SESSIONS JUDGE,
SRIVILLIPUTHUR, VIRUDHUNAGAR DISTRICT.

2 THE FAST TRACK JUDICIAL MAGISTRATE,
SRIVILLIPUTHUR, VIRUDHUNAGAR DISTRICT.

3 DO THRO THE CHEIF JUDICIAL MAGISTRATE,
VIRUDHUNAGAR AT SRIVILLIPUTHUR.

+1. C.C. to M/S S.PALANIVELAYUTHAM Advocate SR.No.11522

RG.GSV-PM/SAR-I 02.03.2016 4P/5C

ORDER

IN

CRL MP(MD) Nos.1808 and 1809 of 2016

IN

CRL RC(MD) No.110 of 2016

Date :29/02/2016