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

Wednesday, the Thirtieth day of March Two Thousand Sixteen
PRESENT

The Hon`ble Mr.Justice V.S.RAVI

CRL MP(MD)Nos.2735 & 2736 of 2016

IN

CRL RC(MD) No.199 of 2016

P.SANKARASUBBU

... PETITIONER/PETITIONER IN BOTH
MISCELLANEOUS PETIIONS

Vs

SRI VISAKA FUELS
REP. BY ITS PROPRIETOR,
S. JEYASEELAN,
S/O. SUYAMBU, NO. 28, MOSES STREET,
NAZARETH, THIRUCHENDUR TALUK,
THOOTHUKUDI DISTRICT.
BOTH MISCELLANEOUS PETIIONS

... RESPONDENT/RESPONDENT IN

Prayer in Crl.MP(MD)No.2735/2016:

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to EXEMPT THE PETITIONER FROM SURRENDER pursuant to the confirmation of conviction and sentence in Crl.A.No.31 of 2015 on the file of the Learned II Additional District & Sessions Judge, Thoothukudi, Thoothukudi District dated 25.01.2016 pending disposal of the main Crl.R.C.

Prayer in CRL MP(MD)NO.2736/ 2016 :

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to SUSPENDING THE SENTENCE imposed upon him in S.T.C.No. 384 of 2013 on the file of the Learned Judicial Magistrate, Sathankulam, Thoothukudi District dated 04.06.2015, which had been confirmed by judgement dated 25.01.2016 passed Crl.A.No. 31 of 2015 on the file of the Learned II Additional District & Sessions Judge, Thoothukudi, Thoothukudi District pending disposal of the main Crl.R.C.

Order : This miscellaneous petitions coming on for orders upon perusing the petitions filed in support thereof and upon hearing the arguments of M/S A.THIRUVADI KUMAR, Advocate for the petitioner in both miscellaneous petitions the court made the following order:-

Crl.M.P. (MD) No.2736 of 2016 is filed by the petitioner/revision petitioner/accused to suspend the sentence imposed on him in C.A.No.31 of 2015 dated 25.01.2016 by the learned II Additional District and Sessions Judge, Thoothukudi, confirming the judgment dated 04.06.2015 made in S.T.C.No.384 of 2013, by the learned Judicial Magistrate, Sathankulam, pending disposal of the revision.

2.The petitioner has filed another application in Crl.M.P.(MD) No.2735 of 2016 to pass an order for exempting the petitioner/revision petitioner/accused from surrendering before the lower Court in connection with the sentence imposed on him in C.A.No.31 of 2015 dated



25.01.2016 by the learned II Additional District and Sessions Judge, Thoothukudi, confirming the judgment dated 04.06.2015 made in S.T.C.No.384 of 2013, by the learned Judicial Magistrate, Sathankulam, pending disposal of the revision.

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3.It is specifically stated on behalf of the petitioner that during the trial and also during the pendency of appeal, the petitioner/revision petitioner/accused has got the benefit of bail and also the petitioner/revision petitioner/accused has appeared before the Court concerned without any fail. 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 the prima facie case in his favour and due to his family circumstances and his livelihood, he is not in a position to surrender before the Court below.

4.It is clearly stated in the affidavit enclosed with the petition that the petitioner is doing "lorry service" in the name and style of Muthulakshmi Lorry Service and he has filled the Diesel for his lorries in Sri Vishaka Fuels owned by the respondent herein. Further, it is stated on behalf of the petitioner that for a period from 22.08.2012 to 03.02.2013, the petitioner has to pay a sum of Rs.2,70,313/- for the diesel filled in his vehicles, for which, the petitioner has issued a cheque bearing No.243131 drawn on State Bank of India, Srivaikuntam branch dated 30.04.2013. On presentation, it has been dishonoured. Further, the petitioner has pointed out that the complainant has failed to prove that he is the holder or the holder in due course with regard to the instrument.

5.It is also pointed out in the grounds of revision that both the Courts below have failed to appreciate the fact that the complainant has failed to substantiate his case with regard to existence of legally enforceable debt and though the accused has failed to reply to the statutory notice, the same would not discharge the onus upon the complainant to prove the existence of legal enforceable debt. It is further stated in the present case, the complainant has not adduced sufficient materials to substantiate the business transaction nor has produced any supporting documents to the existing liability. It is submitted that the complainant has failed to produce the account books or any other supporting documents to prove the existence of legally enforceable debt so as to substantiate the business transaction between the parties.

6.It is further stated that the initial burden is upon the complainant to prove the existence of legally enforceable debt and in the absence of proof of debt, the case of complainant is suspicious and the presumption under Sections 118 and 139 of Negotiable Instruments Act, would come into play only after the complainant has proved the existence of legally enforceable debt.

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. It is also stated that there is prima facie case in favour of the petitioner. 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) in order to establish the bonafides of the petitioner to contest the revision case on merits, the petitioner/revision petitioner/Accused is directed to deposit a sum of Rs.1,00,000/- (Rupees one lakh only) before the learned Judicial Magistrate, Sathankulam to the credit in S.T.C.No.384 of 2013, within a period of four weeks from today and the learned Judicial Magistrate, Sathankulam is directed to deposit the said amount in any one of the nationalised banks, initially for a period of one year and thereafter, it shall be renewed periodically, until further orders. It is made clear that the said amount should not be disbursed to any one, until a direction is issued by this Court.

ii) On such deposit, and also, the petitioner/revision petitioner/Accused shall be released on bail on his executing a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties for a likesum to the satisfaction of the learned Judicial Magistrate, Sathankulam;

iii) the petitioner/revision 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.

iv) the petitioner/revision petitioner/Accused shall furnish his present full details of his 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

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

9. For the above mentioned facts and circumstances, CrI.M.P.(MD) No.2735 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.31 of 2015 dated 25.01.2016 by the learned II Additional District and Sessions Judge, Thoothukudi, confirming the judgment dated 04.06.2015 made in



S.T.C.No.384 of 2013, by the learned Judicial Magistrate, Sathankulam, pending disposal of the revision.

sd/-
30/03/2016

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
THOOTHUKUDI, THOOTHUKUDI DISTRICT.
 - 2 DO-THRO' THE PRINCIPAL SESSIONS JUDGE,
TUTICORIN DISTRICT.
 - 3 THE JUDICIAL MAGISTRATE, SATHANKULAM.
 - 4 DO-THRO' THE CHIEF JUDICIAL MAGISTRATE, TUTICORIN DISTRICT.
- +2. C.Cs. to M/S A. THIRUVADI KUMAR Advocate SR.Nos.17907 & 17908

ORDER
IN
CRL MP(MD) Nos.2735 & 2736 of 2016
IN
CRL RC(MD) No.199 of 2016
Date :30/03/2016

PA/GSV-PM/AR I/31.03.2016/4P/7C