



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

Wednesday, the Thirteenth day of April Two Thousand Sixteen
PRESENT

The Hon`ble Mr Justice V.S.RAVI

CRL MP(MD) Nos.3154 and 3155 of 2016

IN

CRL RC(MD) No.244 of 2016

WEB COPY

VINORA

... PETITIONER/PETITIONER
IN BOTH THE PETITIONS

Vs

G. SAHAYARAJ

... RESPONDENT/RESPONDENT
IN BOTH THE PETITIONS

Prayer in CRL MP(MD). 3154/ 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. 51 of 2015 on the file of the Learned I Additional District & Sessions Judge, Thoothukudi, Thoothukudi District, dated 04.04.2016 pending disposal of the main Criminal Revision Petition.

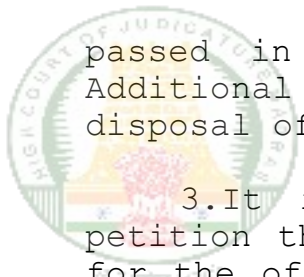
Prayer in CRL MP(MD). 3155/ 2016 :

To enlarge the petitioner on bail by SUSPENDING THE SENTENCE imposed upon him in C.C.No. 754 of 2012 on the file of the Learned Judicial Magistrate/ Fast Track Court (Magisterial Level), Thoothukudi, Thoothukudi District dated 03.09.2013, which had been confirmed by Judgment dated 04.04.2016 passed Crl.A. No. 51 of 2015 on the file of the Learned I Additional District & Sessions Judge, Thoothukudi, Thoothukudi District, pending disposal of the main 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 A.THIRUVADI KUMAR, Advocate for the petitioner in both the petitions and the court made the following order:-

The petitioner has filed an application in Crl.M.P.(MD) No.3154 of 2016, to exempt the petitioner/revision petitioner/Accused from surrendering, pursuant to the confirmation of conviction and sentence in Crl.A.No.51 of 2015 on the file of the learned I Additional District and Sessions Judge, Thoothukudi dated 04.04.2016, pending disposal of the main revision.

2.Further, the petitioner has filed another application in Crl.M.P.(MD) No.3155 of 2016, to enlarge the petitioner on bail, by suspending the sentence imposed upon him in C.C.No.754 of 2012 on the file of the learned Judicial Magistrate/Fast Track Court (Magisterial Level), Thoothukudi, Thoothukudi District dated 03.09.2013, which has been confirmed by Judgment dated 04.04.2016



passed in CrI.A.No.51 of 2015 on the file of the learned I Additional District and Sessions Judge, Thoothukudi, pending disposal of the main revision.

3.It is clearly stated in the affidavit enclosed with the petition that the petitioner has been convicted by the trial Court for the offence under Section 138 of the Negotiable Instrument Act and sentenced to undergo one year simple imprisonment and also directed to pay a sum of Rs.50,000/- the cheque amount as compensation to the complainant, within one month time, in default, the petitioner has to undergo further period of one month simple imprisonment and the same has been confirmed in CrI.A.No.51 of 2015, against which, the petitioner has filed the present revision.

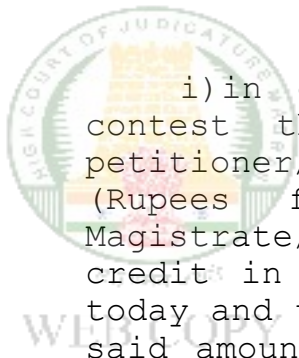
4.It is specifically stated in the petition, that the petitioner is alleged to have borrowed a sum of Rs.50,000/- from the complainant on 23.06.2010 and issued the cheque bearing No.447787 dated 07.10.2012 for a sum of Rs.50,000/-. Since, the said cheque has been dishonoured on presentation, the complainant has filed the case against the petitioner. Further, it is stated in the petition that the complainant has not adduced sufficient materials to substantiate the borrowal and the complainant has also not proved the existence of legally enforceable debt.

5.Further, it is stated that P.W.1 has admitted in his evidence that borrowal has been made on 23.06.2010 and the cheque has been issued on the same day, whereas, the alleged cheque is dated 07.10.2012 only and the same would substantiate the fact that the cheque has been created without any legally enforceable debt.

6.Further, it is seen that as per the averment of both sides, the alleged cheque has been issued for a sum of Rs.50,000/- on 07.10.2012 and both the Courts below have found that the petitioner is liable to undergo one year simple imprisonment and also liable to pay a sum of Rs.50,000/- as compensation.

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.50,000/- (Rupees fifty thousand only) before the learned Judicial Magistrate/Fast Track Court (Magisterial Level), Thoothukudi, to the credit in C.C.No.754 of 2012, within a period of one month from today and the learned Judicial Magistrate 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/Fast Track Court (Magisterial Level), Thoothukudi;

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 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

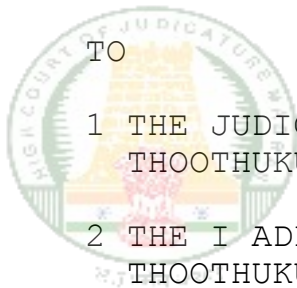
v)on receipt of the true copy of the said affidavit, the respondent herein is directed to verify the veracity of the particulars given in the said affidavit and also liberty is granted to take appropriate follow up action, in accordance with law.

9.For the above mentioned facts and circumstances, Crl.M.P.(MD) No.3154 of 2016 is allowed and the petitioner/revision petitioner/Accused is exempted from surrendering before the lower Court in connection with the confirmation of conviction and the sentence imposed on her in Crl.A.No.51 of 2015 on the file of the learned I Additional District and Sessions Judge, Thoothukudi dated 04.04.2016, pending disposal of the main revision.

sd/-

13/04/2016

/ TRUE COPY /



TO

1 THE JUDICIAL MAGISTRATE /FAST TRACK COURT (MAGISTERIAL LEVEL),
THOOTHUKUDI, THOOTHUKUDI DISTRICT.

2 THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, THOOTHUKUDI,
THOOTHUKUDI DISTRICT.

3 do through THE CHIEF JUDICIAL MAGISTRATE, THOOTHUKUDI.

+2. C.Cs. to M/S A.THIRUVADI KUMAR Advocate SR.Nos.20848&20489

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CSL/SKS-RR/AR-I/18.04.2016 : 4p/6c

ORDER

IN

CRL MP (MD) Nos.3154 and 3155 of 2016

IN

CRL RC (MD) No.244 of 2016

Date :13/04/2016