

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Eighth day of November Two Thousand Seventeen

PRESENT

The Hon`ble Dr. Justice S. VIMALA

CRIMINAL MISCELLANEOUS PETITION No.13254 and 13256 of 2017

IN CRL RC.1362/2017

M.SIVABAKIYAN,

[PETITIONER]

Vs

K.KULANTHAIVEL,

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.RC.No.1362/2017 on the file of the High Court, the High Court will be pleased to (i) (i)suspend the sentence imposed by the Honble Fast Track Magistrate Court, Thirupur in C.C.No.13 of 2015 as confirmed by the Second Additional District Sessions Court in C.A.No.60 of 2016 and enlarge the petitioner on bail till the disposal of this revision petition.(Crl.MP.No.13254/2017)

(ii) exempt the petitioner from surrendering before the Hon'ble Fast Track Magistrate Court, Thirupur in C.C.No.13 of 2015 as confirmed by the second additional district sessions court in C.A.No.60/2016.(Crl.Mp.No.13256/2017).

Order : These petitions coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.RC.No.1362/2017 on the file of the High Court and upon hearing the arguments of M/S.S.M.MURALI DHARAN, Advocate for the petitioner, (in all the petitions) the court made the following order:-

The petitioner was convicted for the offence under Section 138 of Negotiable instrument Act and sentenced by the learned Fast Track Magistrate Court, Thirupur, under judgment dated 26.04.2016, in C.C.No.13 of 2015 as follows:

Offence	<i>Sentence</i>
138 of N.I. Act	One year Rigorous Imprisonment, with fine of Rs.1,000/- in default, to undergo one month Simple Imprisonment

Aggrieved by the same, the petitioner preferred an appeal in Crl.A. No.60 of 2016 before the Second Additional District and Sessions Judge, Thirupur. Under Judgment dated 21.06.2017, the appellate Court, dismissed the appeal, Cheallenging the same, the accused has filed the present Criminal Revision Case and pending revision, she has filed Crl.MP.No.13254 of 2017 seeking to suspend the sentence and to enlarge her on bail and also filed Crl.MP.No.13256 of 2017 to exempt her from surrendering before the trial Court.

2. Learned counsel for petitioner submitted that the Courts below failed to consider the fact that the respondent failed to produce any document other than the subject cheque to prove that he had advanced loan to the petitioner. Further, the respondent did not produce his Income Tax Returns for the Assessment Years 2012-2013, when the alleged loan was advanced to the petitioner by the respondent. Moreover, the fact remains that the respondent was not having source to advance Rs.7 lakhs to the petitioner. Learned counsel further contended that though the respondent had deposed that he borrowed Rs.4 lakhs from his friend Karuppasamy for advancing loan to the petitioner, but the same was not averred in the statutory notice, complaint or in his chief examination in his Income Tax Returns. He further contended that the cheque was issued when the petitioner took loan of Rs.50,000/- from the petitioner and that the cheque was misused to file the present complaint even after the said loan of Rs.50,000/- was repaid. He further submitted that there are arguable points involved in the revision. Hence he prayed for suspension of sentence.

3. Considering the fact that there are arguable points involved in the revision as contended by learned counsel for petitioner and further the revision is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

4. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail, subject to the following conditions:

(i) the petitioner shall deposit a sum of Rs.1,00,000/- (Rupees One lakh only) to the credit of C.C.No.13 of 2015 on the file of the Fast Track Magistrate Court, Thirupur, within six

weeks from the date of receipt of a copy of this order.

(ii) the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the Fast Track Magistrate Court, Thirupur, and on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m. pending revision.

5. As far as petition seeking exemption to surrender is concerned, in the light of the judgment of the Hon'ble Supreme Court rendered in the case of Easwaramurthy vs. N. Krishnaswamy (2006) Cr1.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, the petitioner is exempted from surrendering before the Court below.

-sd/-

08/11/2017

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE 2ND ADDITIONAL
DISTRICT SESSIONS COURT, TIRUPUR

2 THE FAST TRACK MAGISTRATE
COURT, THIRUPUR

+1 C.C. to M/S.S.M.MURALI DHARAN Advocate on payment of
necessary charges Sr.No.20610

Order
in
CRL MP.13254/2017
in
CRL RC.1362/2017

Date :08/11/2017

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MD: 17/11/2017