

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twenty Second day of December Two Thousand Seventeen

PRESENT

The Hon`ble Dr. Justice S. VIMALA

CRIMINAL MISCELLANEOUS PETITION NOS.16406 & 16408 of 2017

IN CRL RC NO.1605/2017

R.SENTHIL MOORTHY @ [PETITIONER / APPELLANT / ACCUSESD]
SENTHIL KUMARA MOORTHY

Vs

L.S.SATHISH KUMAR [RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL RC NO.1605/2017 on the file of the High Court, the High Court will be pleased to

[i]suspend the sentence imposed in S.T.C.No.279 of 2011 on the file of Judicial Magistrate (FTC No.II, Erode) by a Judgment dated 19.08.2015 and the same was confirmed by the Appellate Court in C.A.No.108/2015 on the file of I Additional District and Sessions Judge of Erode by a judgment dated 03.11.2017, IN CRL.RC.NO.1605 OF 2017 [IN CRL.MP.NO.16406 OF 2017]

[ii] exempt the petitioner to surrender before the Appellate Court on the judgment dated 03.11.2017 made in C.A.No.108/2015 on the file of I Additional District and Sessions Judge, Erode confirming the judgment dated 19.08.2015 made in STC.No.279 of 2011 on the file of Judicial Magistrate (FTC No.II,) Erode, IN CRL.RC.NO.1605 OF 2017 [IN CRL.MP.NO.16408 OF 2017]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL RC NO.1605/2017 on the file of the High Court and upon hearing the arguments of M/S.M.N.BALAKRISHNAN, Advocate for the petitioner, the court made the following order:-

The petitioner herein has been found guilty by the trial court / Judicial Magistrate (Fast Track Court No.II), Erode, in S.T.C.No.279 of 2011 and has been convicted and sentenced under the offence that is tabulated as hereunder:-

Convicted under the Offence	Sentenced
U/s.138 N.I.Act	to undergo simple imprisonment for a period of one year and to pay a fine of Rs.5,000/- and in default in payment of fine, to undergo one month simple imprisonment.

2. Against the conviction and sentence passed by the trial court, the petitioner herein has filed Criminal Appeal No.108 of 2015 on the file of learned I Additional District and Sessions Judge, Erode, wherein, the conviction and sentence were confirmed by judgment, dated 03.11.2017. Challenging the same, the Revision Petitioner has filed the present Criminal Revision Case and pending Revision, the petitioner has filed Crl.M.P.Nos.16406 and 16408 of 2017 seeking to suspend the sentence of imprisonment and to exempt him from surrendering before the trial court.

3. The main contention raised by the learned counsel for the petitioner is that the cheque in question was given to one Durairaj, Coimbatore, who is none other than the brother of one K.Balasubramaniam and who is the father-in-law of the witness before the trial Court and the witnesses also admitted that there was a Civil Case pending with respect to the land transaction before the I Additional District Court, Coimbatore. But this contention has not been accepted by the Courts below. Further, the learned counsel for the petitioner submitted that there are arguable points involved in the revision and prayed for suspending the sentence imposed and to exempt the petitioner from surrendering before the trial court. The learned counsel further submitted that the petitioner is willing to abide any of the conditions that may be imposed by this Court. There is also an undertaking on behalf of the petitioner that a sum of Rs.1,00,000/- would be deposited within a period of four weeks from the date of receipt of a copy of this order.

4. Taking into consideration the submissions made by the learned counsel for petitioner and that the Revision Case is not likely to be taken-up for final hearing in the near future and considering the grounds of revision, this Court is of the view that the petitioner herein may be granted the relief of suspension of sentence and exemption him from surrendering before the trial court, subject to the petitioner depositing a sum of Rs.1,00,000/- to the credit of the trial court.

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

(i) The petitioner herein shall deposit a sum of Rs.1,00,000/- (Rupees one lakh only) to the credit of the trial court, within a period of four 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 learned Judicial Magistrate, Fast Track Court No.II, Erode;

(iii) The petitioner shall appear before the said learned Magistrate, on the first working day of every English Calendar month, at 10.30 a.m., pending disposal of the revision.

6. As far as application seeking exemption to surrender is concerned, in the light of the judgment of the Honourable Supreme Court rendered 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, the petitioner is exempted from surrendering before the Court below.

-sd/-
22/12/2017

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 ADDITIONAL DISTRICT AND
SESSIONS JUDGE NO.I, ERODE.

2 THE JUDICIAL MAGISTRATE,
[FAST TRACK COURT NO.II], ERODE.

3 THE CHIEF JUDICIAL MAGISTRATE
ERODE [FOR INFORMATION]

C.C. to M/S.M.N.BALAKRISHNAN Advocate on payment of necessary charges

Order

in
CRL MP.16406 & 16408 OF 2017

in
CRL RC.1605/2017

Date :22/12/2017

From 7.2.2001 the Registry is issuing certified
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MK:02/01/2018