

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Twenty Third day of January Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.11063 of 2017

IN CRL RC.1154/2017

A. SAMIDURAI, [PETITIONER]

Vs

1 K. MANOHARAN, [RESPONDENT]

2 STATE REP BY
PUBLIC PROSECUTOR,
TIRUPPUR DISTRICT.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal RC. No.1154 OF 2017 on the file of the High Court, the High Court will be pleased to suspend the sentence the sentence passed in C.A.No.74 of 2016 by the 1st Additional District and Session Court, Tiruppur dated 21.06.2017 confirming the conviction and sentence passed in C.C.No.41/2014 by the Judicial Magistrate, (FTC), Tiruppur dated 02.06.2016 and enlarge the petitioner in bail pending disposal of the above CRL.RC.1154/2017.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.RC.No.1154 of 2017 on the file of the High Court and upon hearing the arguments of MR.K.C.KARL MARX, Advocate for the petitioner and of Mr.T.SHANMUGA RAJESWARAN, Government Advocate (Crl.Side) for the 2nd Respondent the court made the following order:-

Petitioner was convicted for offences under Section 138 of Negotiable Instruments Act and sentenced to undergo six months S.I and to pay a fine of Rs.1,000/- i/d to under go one month S.I. by learned Judicial Magistrate, Fast Track Court, Tiruppur under judgment in C.C.No.41 of 2014 dated 02.06.2016. The appeal preferred by petitioner in C.A.No.74 of 2016 on the file of learned I Additional District and Sessions Judge, Tiruppur came to be dismissed under judgment dated 21.06.2017. Hence, petitioner seeks suspension of sentence.

2. Learned counsel for petitioner submits that there are several infirmities and inconsistencies found in the prosecution case. It is contended that there are contradictions in the material particulars between the evidence of the prosecution witnesses. It is further represented that there is no precondition requiring the petitioner's surrender or being in confinement in availing the relief of suspension

of sentence under Section 397 Cr.P.C. in exercise of revisional powers by this Court. The decisions of the Honourable Apex Court in **BIHARI PRASAD SINGH VS STATE OF BIHAR AND ANOTHER (2000 SCC (Cri) 1380)** and that of the **IBRAHIM VS STATE OF KERALA (1979 KLT 857)** are relied upon in this regard.

3. Heard Mr.T.Shanmuga Rajeswaran, learned Government Advocate on the submissions made by learned counsel for petitioner.

4. The above decisions have been relied upon time and again by this Court towards reaching the conclusion that in moving a revision against conviction, the accused need not surrender and undergo confinement before seeking the relief of suspension of sentence pending disposal of the Criminal Revision.

5. Therefore, in view of the fact that there are several infirmities in the prosecution case and 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.

6. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond in 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 No.I, Thiruppur, and on further condition that the petitioner shall deposit 50% of the cheque amount before the learned Judicial Magistrate No.I, Thiruppur, and also the petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m. pending revision.

-sd/-
23/01/2018

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 JUDICIAL MAGISTRATE,
NO.I, TIRUPPUR.

2 THE CHIEF JUDICIAL MAGISTRATE
TIRUPPUR. [FOR INFORMATION]

3 THE IST ADDL. DISTRICT AND
SESSIONS COURT, TIRUPPUR.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 PUBLIC PROSECUTOR,
TIRUPPUR DISTRICT.

C.C. to M/S.K.C.KARL MARX Advocate on payment of necessary
charges

Order

in
CRL MP.11063/2017

in
CRL RC.1154/2017

Date :23/01/2018

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ths : 23.01.2018