

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Sixteenth day of February Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.14231 of 2017

IN CRL RC.1437/2017

K.SENGOTTAIYAN

[PETITIONER / APPELLANT]

Vs

S.A.KULANDAIVEL

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL RC.1437/2017 on the file of the High Court, the High Court will be pleased to suspend the sentence made in CA.No.5 of 2016 dated 19.08.2016 on the file of the Principal Sessions Judge, Namakkal confirming the order passed by the Judicial Magistrate (Fast Track Court), Tiruchengode, in STC No.50 of 2015 dated 18.12.2015, to undergo 6 months of simple imprisonment and to pay a sum of Rs.5000/ IDSI for one month for the offences u/s.138 of NI Act pending disposal of above CRL RC.1437/2017 [IN CRL.MP.NO.14231 OF 2017]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL RC.1437/2017 on the file of the High Court and upon hearing the arguments of M/S.D.NANDHAKUMAR, Advocate for the petitioner, 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 fine of Rs.5,000/- i/d to undergo 6 months S.I. by learned Judicial Magistrate, Fast Track Court, Tiruchengode, under judgment in S.T.C.No.50 of 2015 dated 18.12.2015. The appeal preferred by petitioner in C.A.No.5 of 2016 on the file of the learned Principal Sessions Judge, Namakkal, came to be dismissed under judgment dated 19.08.2016. Hence, petitioner seeks suspension of sentence.

2. Learned counsel for petitioner would submit that there are several infirmities and inconsistencies found in the case. It is contended that there are contradictions in the material particulars between the evidence of the 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, the 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 case and there are arguable points involved in the revision, as contended by learned counsel for petitioners, 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 for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of learned Judicial Magistrate, Fast Track Court, Tiruchengode, and on further condition that the petitioner shall deposit 50% of the cheque amount before the learned Judicial Magistrate, Fast Track Court, Tiruchengode, within a period of two weeks 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/-
16/02/2018

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 PRINCIPAL SESSIONS
JUDGE, NAMAKKAL.

2 THE JUDICIAL MAGISTRATE,
[FAST TRACK COURT], TIRUCHENGODE.

3 THE CHIEF JUDICIAL MAGISTRATE
NAMAKKAL [FOR INFORMATION]

C.C. to M/S.D.NANDHAKUMAR Advocate on payment of necessary charges

Order

in
CRL MP.14231/2017

in
CRL RC.1437/2017

Date :16/02/2018

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MK:21/02/2018