

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Second day of January Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice C. T. SELVAM

CRIMINAL MISCELLANEOUS PETITION Nos.16661 & 16662 of 2017

IN CRL RC.1617/2017

V.DHARMALINGAM,

[PETITIONER in BOTH THE PETITIONS]

Vs

STATE BY, INSPECTOR OF POLICE, [RESPONDENT]
MODAKURICHI POLICE STATION,
ERODE DISTRICT.
CR.NO.380 OF 2004.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal RC. No.1617 OF 2017 on the file of the High Court, the High Court will be pleased to

(1) suspend the sentence of imprisonment imposed in the judgment dated 20.11.2017 made in C.A.No.27 of 2014 on the file of the IV Additional District and Sessions Court, Erode District at Bhavani confirming the conviction imposed in the judgment dated 04.03.2017 made in S.C.No.22 of 2007 on the file of the Assistant Sessions Court, Bhavani, pending disposal of the above Crl.RC.1617/2017. (CRL.MP.16661/2017)

(2) grant exemption from surrendering before the trial court in pursuance to the the judgment dated 20.11.2017 made in C.A.No.27 of 2014 on the file of the IV Additional District and Sessions Court, Erode District at Bhavani confirming the conviction imposed in the judgment dated 04.03.2017 made in S.C.No.22 of 2007 on the file of the Assistant Sessions Court, Bhavani, pending disposal of the above Crl.RC.1617/2017. (CRL.MP.16662/2017)

Order : These petitions coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.RC.No.1617 of 2017 on the file of the High Court and upon hearing the arguments of M/S.S.VIJAYAKUMAR, Advocate for the petitioner (IN BOTH THE PETITIONS) and of MR. V.ARUL, ADDL. PUBLIC PROSECUTOR on behalf of the Respondent (IN BOTH THE PETITIONS) the court made the following order:-

Petitioner / Sole Accused faced trial in S.C.No.22/2007 on the file of learned Assistant Sessions Judge, Bhavani. The Trial Court, under judgment dated 04.03.2014, convicted the petitioner for the commission of the offences u/s.498-A and 304[B] IPC and sentenced him to undergo three years rigorous imprisonment and to pay a fine of

Rs.1000/- and in default, to undergo 3 months simple imprisonment for the offence u/s.498[A] IPC and to undergo 7 years rigorous imprisonment for the offence u/s.304[B] IPC. There against, petitioner preferred an appeal in C.A.No.27/2014 on the file of learned IV Additional District and Sessions Judge, Erode District at Bhavani, which came to be dismissed under judgment dated 20.11.2017. This miscellaneous petition has been filed seeking 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 learned Additional Public Prosecutor 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, Bhavani, 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.

-sd/-
02/01/2018

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,
BHAVANI.

2 THE CHIEF JUDICIAL MAGISTRATE
ERODE. [FOR INFORMATION]

3 THE IV, ADDL. DISTRICT AND
SESSIONS COURT, ERODE DISTRICT AT BHAVANI.

4 THE ASSISTANT SESSIONS
COURT, BHAVANI.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
MODAKURICHI POLICE STATION,
ERODE DISTRICT.

+4 C.C. to M/S.S.VIJAYAKUMAR Advocate on payment of necessary charges-Sr.Nos.40 and 41

Order

in
CRL MP.Nos.16661 & 16662/2017

in
CRL RC.1617/2017

Date :02/01/2018

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
ths : 04.01.2017