

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Fifth day of February Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.1339 of 2018

IN CRL RC.162/2018

SAJI VARGHESE,

[PETITIONER]

Vs

MR.M.K.THOMAS

[RESPONDENT]

S/O.LATE M.THOMAS,

NO.1, NARMADHA STREET,

GANGAI NAGAR, OPP.AGN APARTMENT,

KALLIKUPPAM,AMBATTUR, CHENNAI-600 053.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.RC.No.162/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence to undergo 3 Months Simple Imprisonment and Compensation of Rs.7,00,000/- with default sentence of further 1 Month Simple Imprisonment, imposed in Criminal Appeal No.37 of 2017 passed by the Honble Principal District and Sessions, Thiruvallur by order dated 27/07/2017, pending the above Criminal Revision Petition.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.RC.No.162/2018 on the file of the High Court and upon hearing the arguments of M/S.N.BALAJI, 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 three months S.I and to compensation of Rs.7,00,000/-, i/d to undergo one month S.I. by learned Judicial Magistrate, Fast Track Court (Magestrial Level), Ambattur, under judgment in S.T.C.No.69 of 2016 dated 20.02.2017. The appeal preferred by petitioner in C.A.No.37 of 2017 on the file of Principal District and Sessions Judge, Tiruvallur, came to be dismissed under judgment dated 27.07.2017. 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, 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 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, Fast Track Court (Magestrial Level), Ambattur, and on further condition that **(*) the petitioner shall deposit 50% of the cheque amount before the learned Judicial Magistrate, Fast Track Court (Magestrial Level), Ambattur, within a period of Six Weeks from today 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/-

05/02/2018

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.

**(*) Being Mentioned order as per order of this Court dated
14.02.2017**

TO

1 THE JUDICIAL MAGISTRATE,
FAST TRACK COURT (MAGESTRIAL LEVEL) AMBATTUR

2 THE CHIEF JUDICIAL MAGISTRATE
THIRUVALLUR (FOR INFORMATION)

3 THE PRINCIPAL DISTRICT
AND SESSIONS, THIRUVALLUR

+2 C.C. to M/S.N.BALAJI Advocate on payment of necessary
charges Sr.No.2448

Order
in
CRL MP.1339/2018
in
CRL RC.162/2018

Date :05/02/2018

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

MD: 05/02/2018
MD: 15/02/2018