

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Sixth day of February Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.1394 of 2018

IN CRL RC.166/2018

P.N.SOMASKANDAN,

[PETITIONER]

Vs

P.ESSWARA GUPTA,

[RESPONDENT]

PROPRIETOR, M/S.VASSAVI ENTERPRISES,

NO.168, GOVINDAPPAN NAICKEN STREET, CHENNAI - 1

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.166/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed by the Learned Metropolitan Magistrate, Fast Track No.IV, George Town, Chennai in C.C.No.2499 of 2010 dated 02.02.2015, confirmed by the Learned I Additional Sessions Judge at Chennai in CA No.50 of 2015 dated 30.08.2017 and enlarge the petitioner on bail pending disposal of the above revision. [CRL.MP.NO.1394/2018]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.166/2018 on the file of the High Court and upon hearing the arguments of M/S.R.GANESH KUMAR Advocate for the petitioner the court made the following order:-

Notice to the respondent returnable by three weeks. Private notice is also permitted.

2. Petitioner was convicted for offences under Section 138 of Negotiable Instruments Act and sentenced to one year S.I and to pay the compensation of Rs.2,13,090/- i.e., the cheque amount to be paid to the complainant by the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai in C.C.No.2499 of 2010 dated 02.02.2015. The appeal preferred by petitioner in C.A.No.50 of 2015 on the file of learned I Additional District and Sessions Judge, Chennai came to be dismissed under judgment dated 30.08.2017. Hence, petitioner seeks suspension of sentence.

3. 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.

4. Heard the learned counsel for the petitioner.

5. 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.

6. 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.

7. Accordingly, there shall be an order of interim suspension of sentence for a period of three weeks on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- each (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai and on further condition that the petitioner shall deposit 50% of the cheque amount before the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai 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/-

06/02/2018

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 METROPOLITAN MAGISTRATE,
FAST TRACK COURT NO.IV, GEORGE TOWN, CHENNAI

2 THE 1 ADDITIONAL DISTRICT
AND SESSIONS JUDGE, CHENNAI

3 THE CHIEF METROPOLITAN
MAGISTRATE, EGMORE [FOR INFORMATION]

+1 C.C. to M/S.R.GANESH KUMAR Advocate on payment of necessary
charges SR.NO. 2522

Order

in
CRL MP.1394/2018

in
CRL RC.166/2018

Date :06/02/2018

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
RD 06/02/2018