

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Seventh day of February Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.1427 of 2018

IN CRL RC.170/2018

1 MRS.RUPA KANAIYA, [PETITIONER]
THE PROPRIETRIX, M/S.ARPAN EXPORTS,

2 PARESH KANAIYA,
MANDATE HOLDER OF M/S.ARPAN EXPORTS,

Vs

MR.N.RAJESH, [RESPONDENT]
PROPRIETOR, M/S.RAJESH ASSOCIATES,
REP. BY HIS POWER AGENT, MR.H.NEMICHAND,

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.170/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence and compensation imposed in Crl.Appeal No.32 of 2014 on the file of the V Additional Sessions Judge, Chennai dated 31/10/2017 confirming the judgment in C.C.No.5433 of 2004 on the file of the Metropolitan Magistrate/Fast Track Court No.IV, George Town, Chennai dated 30/01/2014 and grant bail to the Revision Petitioners/Accused, pending disposal of the main Criminal Revision Petition.[CRL.MP.NO.1427/2018]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.170/2018 on the file of the High Court and upon hearing the arguments of M/S.C.K.APPAJI Advocate for the petitioner and of MR. on behalf of the Respondent the court made the following order:-

Petitioners were convicted for offences under Section 138 of Negotiable Instruments Act and sentenced to two years each and is ordered to pay jointly the entire cheque amount of Rs.15,00,000/- as compensation to the complainant by learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai under judgment in C.C.No.5433 of 2004 dated 30.01.2014. The appeal preferred by petitioner in C.A.No.32 of 2014 on the file of the learned V Additional Sessions Judge, Chennai came to be dismissed under judgment dated 31.10.2017. 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 each of 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 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, within a period of eight 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/-
07/02/2018

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 CHIEF METROPOLITAN
MAGISTRATE, EGMORE [FOR INFORMATION]

3 THE V ADDITIONAL SESSIONS
JUDGE, CHENNAI

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

Order

in
CRL MP.1427/2018

in
CRL RC.170/2018

Date : 07/02/2018

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RD 07/02/2018