

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Thirteenth day of February Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V.MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.1985 of 2018

IN CRL RC.208/2018

SHAYATULLAH, [ACCUSED/APPELLANT/REVISION PETITIONER]

Vs

SHAKEELA, [COMPLAINANT/RESPONDENT/RESPONDENT]

Petition praying that in the circumstances stated therein the High Court will be pleased to suspend the sentence of imprisonment dated 25.11.2016 in STC No.12 of 2013 on the file of the Judicial Magistrate (Fast Track Court, Omalur) has confirmed by the judgment dated 19.08.2017 in C.A.No.122 of 2016 on the file of the III Additional Sessions Judge, Salem pending disposal of the above appeal

Order : This petition coming on for orders upon perusing the petition and upon hearing the arguments of M/S.D.SHIVAKUMARAN 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 one year R.I and to pay a fine of Rs.5,000/- i/d to undergo 1 month S.I. by learned Judicial Magistrate, Fast Track Court, Omalur, under judgment in S.T.C.No.12 of 2013 dated 25.11.2016. The appeal preferred by petitioner in C.A.No.122 of 2016 on the file of III Additional Sessions Jude, Salem, came to be dismissed under judgment dated 19.08.2017. 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 Judicial Magistrate, Fast Track Court, Omalur, 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/-

13/02/2018

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 JUDICIAL MAGISTRATE,
FAST TRACK COURT, OMALUR

2 THE III ADDITIONAL SESSIONS
JUDGE, SALEM

3 THE CHIEF JUDICIAL MAGISTRATE
SALEM [FOR INFORMATION]

4 THE SUPERINTENDENT
CENTRAL PRISON, COIMBATORE

+1 C.C. to M/S.D. SHIVAKUMARAN Advocate on payment of necessary charges SR.NO. 3051

Order

in
CRL MP.1985/2018

in
CRL RC.208/2018

Date :13/02/2018

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RD 13/02/2018