

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Twenty Third day of January Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.259 of 2018

IN CRL RC.40/2018

V.RAJA,

[PETITIONER]

Vs

LAKSHMIKANTHAN,

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.RC.No.40/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on him by the learned Metropolitan Magistrate, Fast Track Court No.I, Allikulam, Chennai-600 003, and sentence passed by the trial court in C.C.No.2528 of 2012 by judgment dated 08.03.2016 on the file of the learned Metropolitan Magistrate, Fast Track Court No.I, Allikulam, Chennai-3, as confirmed by the learned XIX Additional Sessions Judge, Chennai made in CA No.82 of 2016 in judgment dated 30.11.2016 and enlarge him on bail pending disposal of the above Crl.Revision Petition.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.RC.40/2018 on the file of the High Court and upon hearing the arguments of M/S.D.N.DHURGA SHA, Advocate for the petitioner and of MR. T. SHANMUGA RAJESWARAN, Government Advocate on behalf of the Respondent the court made the following order:-

Petitioner was convicted for offences under Section 138 of Negotiable Instruments Act and sentenced to undergo one year S.I and to pay compensation of Rs.3,00,000/- i.e, cheque amount, to be paid to the complainant within 2 months form the date of the

Judgment i/d to under go three months S.I. by learned Metropolitan Magistrate, Fast Track Court No.I, Allikulam, Chennai under judgment in C.C.No.2528 of 2012 dated 08.03.2016. The appeal preferred by petitioner in C.A.No.82 of 2016 on the file of learned XIX Additional Session Court, City Civil Court, Chennai - 1 came to be dismissed under judgment dated 30.11.2016. 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 Mr.T.Shanmuga Rajeswaran, learned Government Advocate 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 Metropolitan Magistrate, Fast Track Court No.I, Allikulam, Chennai and on further condition that the petitioner shall deposit 50% of the cheque amount before the learned Metropolitan Magistrate, Fast Track Court No.I, Allikulam, 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/-
23/01/2018

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 METROPOLITAN MAGISTRATE
FAST TRACK COURT NO.I, ALLIKULAM, CHENNAI

2 THE CHIEF METROPOLITAN
MAGISTRATE, EGMORE, CHENNAI (FOR INFORMATION)

3 THE XIX ADDITIONAL
SESSION COURT, CITY CIVIL COURT, CHENNAI 1

+1 C.C. to M/S.D.N.DHURGA SHA Advocate on payment of
necessary charges 1496

Order
in
CRL MP.259/2018
in
CRL RC.40/2018

Date :23/01/2018

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MD: 24/01/2018