

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Sixth day of February Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.2742 of 2018

IN CRL RC.256/2018

S.PUSHPALATHA,

[PETITIONER]

Vs

S.DINESHKUMAR,

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal RC.No.256 OF 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner by the judgment dated 30.01.2018 passed in C.A.No.213/2017 on the file of the 1st Additional District and Sessions Judge, Erode confirming the judgment dated 03.04.2017 passed in S.T.C.No.432/2014 on the file of the Judicial Magistrate Court (Fast Track Court No.I), Erode pending disposal of the above CRL.RC.NO.256/2018.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.RC.No.256 of 2018 on the file of the High Court and upon hearing the arguments of M/S.I.C.VASUDEVAN, 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 six months S.I and also imposed the compensation amount of Rs.3,20,000/- i/d to undergo one month S.I. by learned Judicial Magistrate (Fast Track Court No.I), Erode under judgment in S.T.C.No.432 of 2014 dated 03.04.2017. The appeal preferred by petitioner in C.A.No.213 of 2017 on the file of the learned I Additional District and Sessions Judge, Erode, came to be dismissed under judgment dated 30.01.2018. Hence, petitioner seeks suspension of sentence.

2. Learned counsel for petitioner would submit that there are several infirmities and inconsistencies found in the case. It is contended that there are contradictions in the material particulars between the evidence of the 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 case and there are arguable points involved in the revision, as contended by learned counsel for petitioners, 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 for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of learned Judicial Magistrate Court (Fast Track Court No.I), Erode, and on further condition that the petitioner shall deposit 50% of the cheque amount before the learned Judicial Magistrate Court (Fast Track Court No.I), Erode, within a period of two 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/-
26/02/2018

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 NO.I) ERODE.

2 THE CHIEF JUDICIAL MAGISTRATE
ERODE. [FOR INFORMATION]

3 THE 1ST ADDL. DISTRICT SESSION
JUDGE, ERODE.

C.C. to M/S.I.C.VASUDEVAN Advocate on payment of necessary charges

Order

in
CRL MP.2742/2018

in
CRL RC.256/2018

Date :26/02/2018

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THS : 27.02.2018