

IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Criminal Jurisdiction )

Thursday, the First day of March Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.2923 of 2018

IN CRL RC.265/2018

S.CHITRA,

[ PETITIONER ]

Vs

T.HARIHARAN,

[ RESPONDENT ]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.265/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner in the above judgment dated 13.12.2017 in STC No.37 of 2016 till the disposal of the above criminal revision petition.[CRL.MP.NO.2923/2018]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.265/2018 on the file of the High Court and upon hearing the arguments of M/S.G.ASHOK 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 the offence under Section 138 of Negotiable Instruments Act and sentenced to undergo nine months S.I and to pay the compensation of Rs.5,50,000/- i.e., the cheque amount to be paid to the complainant by the learned Judicial Magistrate, Fast Track Court (Magisterial Level) Thiruvallur in S.T.C.No.37 of 2016 dated 13.12.2017. The appeal preferred by the petitioner in C.A.No.22 of 2018 on the file of learned Principal Sessions Judge, Thiruvallur came to be dismissed under judgment dated 15.02.2018. Hence, petitioner seeks suspension of sentence.

3. Learned counsel for the 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, 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 Judicial Magistrate, Fast Track Court, (Magisterial Level) Thiruvallur, and on further condition that the petitioner shall deposit 50% of the cheque amount before the learned Magistrate, within a period of three 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/-  
01/03/2018

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[MAGISTERIAL LEVEL] THIRUVALLUR

2 THE PRINCIPAL SESSIONS JUDGE  
THIRUVALLUR

3 THE CHIEF JUDICIAL MAGISTRATE  
THIRUVALLU[FOR INFORMATION]

C.C. to M/S.G.ASHOK KUMAR Advocate on payment of necessary  
charges

Order

in  
CRL MP.2923/2018

in  
CRL RC.265/2018

Date :01/03/2018

From 7.2.2001 the Registry is issuing certified  
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RD 01/03/2018