

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.3070 of 2018

IN CRL RC.244/2018

MR.NANDAGOPAL

[PETITIONER]

Vs

DR.V.BALAKRISHNAN

[RESPONDENT]

REP BY POWER OF ATTORNEY HOLDER

MR.K.KRISHNAN

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.244/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in C.A.No.115/2012 on the file of VII Additional Sessions Judge, Chennai dated 10.10.2013 confirming the judgment dated 07.06.2012 made in C.C.NO.2499/2010 on the file of XIV Metropolitan Magistrate Egmore, Chennai and pass such further or other orders. [CRL.MP.NO.3070/2018]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.244/2018 on the file of the High Court and upon hearing the arguments of M/S.A.RAJARAMAN, Advocate for the petitioner and of M/S.S.RAJASEKARAN Advocate on behalf of the Respondent the court made the following order:-

Petitioner was convicted for an offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo one month Rigorous Imprisonment and to pay a compensation of Rs.34,34,960/- by the learned XIV Metropolitan Magistrate, Egmore, Chennai, under judgment in CC No.2499 of 2010 dated 07.06.2012. The appeal preferred by petitioner in C.A.No.115 of 2012 on the file of the learned VII Additional Sessions Judge, Chennai came to be dismissed under judgment dated 10.10.2013. 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. Since, it is reported by the learned counsel for the petitioner that he already paid a sum of Rs.12,00,000/- as on date which was accepted by the learned counsel for the respondent. The suspension of sentence is ordered, on payment of the balance amount of Rs.5,00,000/- out of Rs.17,00,000/- which will be the total 50% of the original cheque amount to the respondent or his counsel, within a period of three weeks.

7. Accordingly, on compliance of the above condition in Para-6, 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 XIV Metropolitan Magistrate Court at Chennai, and on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m. pending revision.

Post the matter on 27.03.2018.

-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 METROPOLITAN MAGISTRATE,
COURT NO.XIV,CHENNAI

2 THE CHIEF METROPOLITAN
MAGISTRATE,EGMORE[FOR INFORMATION]

3 THE VII ADDL.SESIONS JUDGE
CHENNAI

C.C. to M/S.A.RAJARAMAN Advocate on payment of necessary
charges SR.NO.

Order

in
CRL MP.3070/2018

in
CRL RC.244/2018

Date :01/03/2018

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RD 06/03/2018