

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Ninth day of March Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.3685 of 2018

IN CRL RC.310/2018

G.KALAVATHY,

[PETITIONER]

Vs

P.VIJAYAKANTH,

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.310/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the Petitioner in Judgment passed in C.A.No.01 of 2014 dated 02.09.2015 by the Honble I Additional Sessions Judge, Thiruvallur, reversing the Judgment passed in C.C.No.93 of 2012 dated 22.10.2013 by the Honble Fast Track Court (Judicial magisterial Level) Thiruvallur, pending disposal of the Criminal Revision.[CRL.MP.NO.3685/2018]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.310/2018 on the file of the High Court and upon hearing the arguments of MR.M/S.L.RAJASEKAR, Advocate for the petitioner and of MR.P.MANIKANNAN Advocate on behalf of the Respondent the court made the following order:-

Petitioner faced trial in S.T.C.No.93 of 2012 on the file of learned Fast Track Court (Magisterial Level), Tiruvallur. Trial Court, under judgment dated 22.10.2013, acquitted him. There against, *de facto* complainant preferred C.A.No.1 of 2014 on the file of learned I Additional Sessions Judge, Tiruvallur. Appellate Court, under judgment dated 02.09.2015, convicted the petitioner for offences under Section 138 of Negotiable Instruments Act and sentenced to undergo six months imprisonment and to pay the cheque amount of Rs.1,50,000/- within a period of three months in default to undergo one month S.I. 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. The learned counsel for the petitioner submits that the petitioner has already deposited 50% of the cheque amount has directed by this Court in Crl.M.P.No.15591 of 2017 in Crl.RC.SR.55441 of 2018 dated 05.02.2018.

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 Fast Track Court (Magisterial Level), Tiruvallur, 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/-
09/03/2018

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 FAST TRACK COURT
[MAGISTERIAL LEVEL], TIRUVALLUR

2 THE CHIEF JUDICIAL MAGISTRATE
THIRUVALLUR[FOR INFORMATION]

3 THE 1ST ADDITIONAL SESSIONS
JUDGE, TIRUVALLUR

+1 C.C. to M/S.L.RAJASEKAR Advocate on payment of necessary
charges SR.NO. 4703

Order

in
CRL MP.3685/2018

in
CRL RC.310/2018

Date :09/03/2018

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
RD 13/03/2018