

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Twenty first day of March Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.4515 of 2018

IN CRL RC.371/2018

A.S.VIJAYA,

[PETITIONER]

Vs

S.LOGANATHAN
S/O.K.SUBRAMANIAM,
52-J, IYYAPPA NAGAR,
CHERAN STREET, CHENNIMALAI,
PERUNDURAI TALUK,
ERODE DISTRICT

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.RC.No.371/2018 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 08.01.2018 passed in CA No.35/2015 on the file of the 1st Additional District and Sessions Judge, Erode confirming the judgment dated 10.04.2015 passed in STC No.535/2013 on the file of the Judicial Magistrate Court (Fast Track Court No.II) Erode pending disposal of the above revision.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.RC.No.4515/2018 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:-

Notice to the respondent returnable in four weeks. Private notice is also permitted.

2. Petitioner was convicted for the offence under Section 138 of Negotiable Instruments Act and sentenced to one year S.I and to pay a fine of Rs.5,000/-, in default, to undergo three months S.I. by the learned Judicial Magistrate (Fast Track Court No.2,) Erode, under judgment in S.T.C.No.535 of 2013 dated 10.04.2015. The appeal preferred by the petitioner in C.A.No.35 of 2015 on the file of learned I Additional District and Sessions Judge, Erode came to be dismissed under judgment dated 08.01.2018. 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. He would further submit that he has already deposited a sum of Rs.77,000/- before the trial Court.

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 Judicial Magistrate (Fast Track Court No.2) Erode and on further condition that the petitioner shall deposit 50% of the cheque

amount i.e. Rs.5,00,000/- after deducting the amount of Rs.77,000/- already deposited by the petitioner before the trial court, before the learned Judicial Magistrate (Fast Track Court No.2), Erode. The petitioner shall appear before the said Court on the first working day of every English Calendar month at 10.30 a.m. pending revision.

-sd/-
21/03/2018

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 NO.2) ERODE

2 THE CHIEF JUDICIAL MAGISTRATE
ERODE (FOR INFORMATION)

3 THE I ADDITIONAL DISTRICT
AND SESSIONS JUDGE, ERODE

+1 C.C. to M/S.I.C.VASUDEVAN Advocate on payment of
necessary charges Sr.NO.5570

Order
in
CRL MP.4515/2018
in
CRL RC.371/2018

Date :21/03/2018

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MD: 21/03/2018