

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Twenty Eighth day of March Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V.MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION Nos.5078 & 5079 of 2018

IN CRL RC.418/2018

K.PERIYASAMY

[PETITIONER / Appellant / Accused]

Vs

M/S.PANDIAN FINANCE
PARTNERSHIP FIRM

[RESPONDENT]

Petitions praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL RC.418/2018 on the file of the High Court, the High Court will be pleased to

(i) suspend the sentence imposed in Criminal Appeal No.227 of 2017 dated 02.01.2018 on the file of the learned Principal Sessions Judge, Erode and confirming the order in STC No.206 of 2015 dated 02.08.2017 on the file of learned Judicial Magistrate (Fast Track) Court No.1, Erode, CRL RC.418/2018 [IN CRL.MP.NO.5078 OF 2018)

(ii) exempt the petitioner from surrendering before trial court in connection with the bailable warrant issued against the petitioner in STC No.206 of 2015 on the file of Judicial Magistrate (Fast Track Court) No.I, Erode and the direction of judgment dated 02.01.2018 passed in CA No.227 of 2017 on the file of the Principal Sessions Judge, Erode pending the present CRL RC.418/2018 [IN CRL.MP.NO.5079 OF 2018)

Order : These petitions coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL RC.418/2018 on the file of the High Court and upon hearing the arguments of M/S.SP.YUARAJ, Advocate for the petitioner, 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 year S.I. and to compensation of Rs.5,90,000/-, ie., the cheque amount to be paid to the complainant within two months from the date of Judgment i/d to undergo one month S.I. by the learned Judicial Magistrate (Fast Track Court No.I), Erode, under judgment in S.T.C.No.206 of 2015 dated 02.08.2017. The appeal preferred by the petitioner in C.A.No.227 of 2017 on the file of learned Principal Sessions Judge, Erode, came to be dismissed under judgment dated 02.01.2018. Hence, this revision.

2. Learned counsel for the petitioner submitted that the petitioner also rebutted the presumption contemplated under Section 139 of the Negotiable Instrument Act. It is also submitted by the learned counsel for the petitioner that there are arguable points involved in the revision and there are contradictions in the material particulars between the evidence of the witnesses, as there are several infirmities in the prosecution case. It is also submitted that the petitioner was not able to appear before the Lower Appellate Court on the date of pronouncement of the judgment, on the ground that the petitioner has wrongly noted the date of judgment and therefore, the absence of the petitioner is neither willful nor wanton.

3. Heard the learned counsel for the petitioner and also perused the materials available on record including the impugned judgment of conviction.

4. In respect of the contention raised by the learned counsel for the petitioner, it is relevant to note the settled principles of law laid down by the Honourable Supreme Court of India reported in **BIHARI PRASAD SINGH VS STATE OF BIHAR AND ANOTHER (2000 SCC (Cr1) 1380)**. In the above said decision, Their Lordships have held that for seeking suspension of sentence, the accused need not be under confinement.

5. In respect of the same question of law viz., whether the accused concerned in the revision against conviction, has to surrender and thereafter only seek the relief of suspension of sentence, the Honourable Mr. Justice Khalid (as he then was) has held in the decision reported in **IBRAHIM VS STATE OF KERALA (1979 KLT 857)** has held that in respect of the revision against conviction and sentence, for granting the relief of suspension of sentence, the accused need not surrender and undergo confinement and filing revision without surrendering and confinement is well within the power contemplated under Section 397(1) of Cr.P.C. as Section 397(1) Cr.P.C. itself is very clear that there is absolutely no ambiguity as the reading of the words "**direct that execution of any sentence or order be suspended**"

6. In view of the above, I am of the considered view that in these matters, more particularly, in respect of any revision against conviction, the accused need not surrender and undergo confinement for seeking the relief of suspension of sentence pending disposal of the Criminal Revision.

7. 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 the learned counsel for the petitioner, and further the revision is not likely to be taken up for final hearing in the near future, I am of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

8. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that he executes 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 the learned Judicial Magistrate (Fast Track Court No.I), Erode and on further condition that the petitioner shall deposit 50% of the cheque amount to the credit of S.T.C.No.206 of 2015 on the file of the learned Judicial Magistrate (Fast Track Court No.I), Erode, within a period of four weeks from the date of receipt of a copy of this order and the petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m. pending revision.

-sd/-
28/03/2018

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.I, ERODE.

2 THE CHIEF JUDICIAL MAGISTRATE
ERODE [FOR INFORMATION]

3 THE PRINCIPAL SESSIONS
JUDGE, ERODE.

+2C.C. to M/S.SP.YUARAJ Advocate on payment of necessary charges SR Nos.6259, 6260

Order

in
CRL MP.5078 & 5079 of 2018

in
CRL RC.418/2018

Date :28/03/2018

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

MK:02/04/2018