

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Twenty Seventh day of June Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION No.6609 of 2018

IN CRL RC.559/2018

SHANKARARAMAN,

[PETITIONER/APPELLANT]

Vs

STATE BY

[RESPONDENT]

THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH,
ERODE. CR.NO.41 OF 2009

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal RC.No.559 OF 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in Crl.Appeal No.52 of 2017 by I Additional District and Sessions Judge, Erode dated 19.01.2018 by confirming the judgment of conviction imposed in C.C No.544 of 2013 on the file of the Chief Judicial Magistrate, Erode dated 25.01.2017 till the disposal of the above revision petition before this Hon'ble Court.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.RC.No.559 of 2018 on the file of the High Court and upon hearing the arguments of M/S.R.MARUDHACHALAMURTHY, Advocate for the petitioner and of Mr.R.SURYA PRAKASH, Government Advocate (Crl.Side) on behalf of the Respondent the court made the following order:-

Orders Reserved on : 28.04.2018

Orders Pronounced on : 27.06.2018

The trial Court convicted the appellant/accused for the offence under Section 408 I.P.C and sentenced the appellant/accused to undergo 2 years Rigorous Imprisonment for the said offence and also imposed a fine of Rs.5000/- and in default in payment of fine, he was sentenced to undergo Rigorous Imprisonment for a period of 6 months.

2. The trial Court also convicted the appellant/accused for the offence under Section 420 IPC and sentenced the accused to undergo Rigorous Imprisonment for a period of two years and also imposed a fine of Rs.5000/- and, in default in payment of fine, he was sentenced the accused to undergo Rigorous Imprisonment for a period of 6 months.

3. The case of the prosecution is that the respondent herein filed the case in Crime No.41 of 2009 on 07.10.2009 against the accused for the alleged offences under Sections 408 and 420 of I.P.C, and he worked as an Assistant General Manager (Marketing) of S.K.M.Products Company, Erode. The charge levelled as against this petitioner is that it was duty of the accused while acting as Assistant Manager (Marketing) in the capacity of Manager to collect deposit money, Egg sale amount from the distributors and remittance of the same in Company's account on daily basis. While appointing the petitioner in the said capacity, the SKM Egg product Company entrusted Lenova LapTop worth of Rs.45,500/- and Nokia Cell Phone worth of Rs.5000/- and cyber shot Digital Camera Rs.12,150/- and all those things were given to the accused for the purpose of marketing and the same was not returned by the petitioner and he utilized the same for his own purpose.

4. It is further alleged by the prosecution that the sum of Rs.2,53,564.68/- was collected from various distributors by utilizing his capacity and also a further sum of Rs.3,35,512/- had been collected by him as a special deposit and sales from the buyers of the said SKM EGG centre and as such, the total sum of Rs.5,89,076.68/- had not been deposited in the said Company account by the petitioner. Likewise, another sum of Rs.71,599/- collected in the due course of business of the company by the petitioner, has also not been deposited in the company account and thereby, the petitioner had also dishonestly misappropriated the amount of Rs.7,23,250.68 due to be paid to the SKM EGG product Company and retained the amounts and property as wrongful gain. Therefore, the charge under Sections 408 and 420 of IPC had been framed as against this petitioner.

5. The trial Court had erroneously convicted the petitioner without considering the defence and the flaw on the prosecution case and thereby convicted him for the offences under Sections 408 and 420 of I.P.C and sentenced him to undergo two years rigorous imprisonment and fine of Rs.5,000/-, in default, rigorous imprisonment for six months separately for both the offences stated supra. Aggrieved by the above conviction, the petitioner had approached the I additional District and Sessions Judge, Erode and filed the appeal in Cr.A.No.52 of 2017 and the same was dismissed by the lower appellate Court. Challenging the same, he has filed the above Crl.R.C. before this Court.

6. The learned counsel for the petitioner has submitted that the trial Court has relied on the evidence of P.W.5 and P.W.6 in respect of the alleged collection of the amount(s) due to the Company.

7. In view of certain material contradictions as pointed out by the learned counsel for the petitioner and taking into consideration of the fact that the petitioner is undergoing kidney treatment, I am inclined to extend the order of interim suspension of sentence which was already ordered by this Court on 28.04.2018, until further orders subject to the following condition:-

(i) It is ordered that the petitioner shall be released on bail, in the event of arrest or on their appearance before the learned Chief Judicial Magistrate, Erode, within a period of two weeks from the date of receipt of a copy of this order, 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 the arresting Officer or to the satisfaction of the learned Magistrate concerned and on further condition that they shall report before the respondent police daily at 10.30 a.m.,

-sd/-
27/06/2018

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 CHIEF JUDICIAL MAGISTRATE
ERODE.

2 THE I, ADDL. DISTRICT AND
SESSIONS JUDGE, ERODE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH, ERODE.

+1 C.C. to M/S.R.MARUDHACHALAMURTHY Advocate on payment of
necessary charges -Sr.11837

Order

in
CRL MP.6609/2018

in
CRL RC.559/2018

Date :27/06/2018

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
ths : 29.06.2018