

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twenty Fifth day of January Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.764 of 2018

IN CRL RC.102/2018

NANTHAKUMAR,

[PETITIONER]

Vs

R.RAJA,

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal RC No.102 OF 2015 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in the Judgment C.A No.187/2017 dated 07.11.2017 on the file of Additional Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode confirming the sentence imposed in the judgment dated 27.06.2017 in STC No.508/2016 on the file of Judicial Magistrate (FTC-II), Erode pending disposal of the above CRL.RC.102/2018.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.RC.No.102 of 2018 on the file of the High Court and upon hearing the arguments of MR.I.C.VASUDEVAN, FOR M/S.R.NALLIYAPPAN, Advocate for the petitioner the court made the following order:-

Petitioner was convicted for offences under Section 138 of Negotiable Instruments Act 1881 and sentenced to undergo one year S.I and to pay fine of Rs.5,000/- i/d to under go three months S.I. by the learned Judicial Magistrate, Fast Track Court No.II, Erode under judgment in S.T.C.No.508 of 2016 dated 27.06.2017. The appeal preferred by petitioner in C.A.No.187 of 2017 on the file of learned Additional Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court) Erode, came to be dismissed under judgment dated 07.11.2017. Hence, petitioner seeks suspension of sentence.

2. Learned counsel for 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.

3. Heard learned Government Advocate (Crl.side) on the submissions made by 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 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.II, Erode and on further condition that the petitioner shall deposit 50% of the cheque amount before the learned Judicial Magistrate Court, Erode, 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. Notice.

-sd/-
25/01/2018

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,
ERODE.

2 THE CHIEF JUDICIAL MAGISTRATE
FAST TRACK COURT NO.II, ERODE.

3 THE CHIEF JUDICIAL MAGISTRATE
ERODE. [FOR INFORMATION]

4 THE ADDL. SESSIONS JUDGE,
MAGALIR NEETHI MANDRAM
(FAST TRACK MAHILA COURT) ERODE

C.C. to M/S.R.NALLIYAPPAN Advocate on payment of necessary
charges

Order

in
CRL MP.764/2018

in
CRL RC.102/2018

Date :25/01/2018

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ths : 25.01.2018