

IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Criminal Jurisdiction )

Tuesday, the Thirtieth day of January Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.917 of 2018

IN CRL RC.121/2018

KUMAR,

[ PETITIONER ]

Vs

STATE REP. BY  
THE INSPECTOR OF POLICE,  
A.PALLIPATTY POLICE STATION,  
DHARMAPURI DISTRICT

[ RESPONDENT ]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal RC No.121 OF 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence on the petitioner in Crl.Appeal No.27 of 2017 on the file of the Principal Sessions Judge, Dharmapuri in dated 22.11.2017 and modified the judgment made in SC No.111 of 2015 on the file of the Assistant Sessions Judge, Harur dated 17.2.2017 pending disposal of the above Crl.R.C.121/2018.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.RC.No.121 of 2018 on the file of the High Court and upon hearing the arguments of MR.DURAI GUNASEKARAN, Advocate for the petitioner and of MR. PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

Petitioner was convicted for offences under sections 341 and 307 of IPC and for the offence under Section 341 of I.P.C., the appellant was sentenced to pay a fine of Rs.100/- in default to undergo one week simple imprisonment and to undergo simple imprisonment for a period of four years and to pay a fine of Rs.1,000/- in default to undergo three months imprisonment for the offence under Section 307 of IPC by the Assistant Sessions Judge, Harur in S.C.No.111 of 2015 dated 17.02.2017. Aggrieved by the judgement in the above S.C.No.111 of 2015, the petitioner preferred an appeal before the Principal Sessions Judge, Dharmapuri in Crl.A.No.27 of 2017. The learned Appellate Court was pleased to set aside the punishment imposed under section 307 of IPC and confirmed the sentence imposed under section 341 of IPC and further instead of 307 of I.P.C., the appellant was convicted under Section 326 of IPC and awarded a sentence to undergo three years simple imprisonment and the fine of Rs.1,000/- already paid was taken as the fine, on 22.11.2017. 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 Assistant Sessions Judge, Harur, within a period of four weeks and on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m. pending revision.

-sd/-  
30/01/2018

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 ASSISTANT SESSIONS JUDGE,  
HARUR.

2 THE PRINCIPAL SESSIONS JUDGE,  
DHARMAPURI. [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR  
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,  
A.PALLIPATTY POLICE STATION,  
DHARMAPURI DISTRICT

+1 C.C. to M/S.DURAI GUNASEKARAN Advocate on payment of  
necessary charges -Sr.2042

Order

in  
CRL MP.917/2018

in  
CRL RC.121/2018

Date :30/01/2018

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ths : 30.01.2018