



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Wednesday, the Eighteenth day of July Two Thousand Eighteen

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) Nos.3857 and 3858 of 2018

IN

CRL RC(MD) No.281 of 2018

K.SUBRAMANIAN @ A.K.SUBBU

... PETITIONER/ PETITIONER/
APPELLANT/ ACCUSED NO.1
IN BOTH THE PETITIONS

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
SPL CBI, ACB CHENNAI.
FIR NO.34(A)/2006

... RESPONDENT/ RESPONDENT/
RESPONDENT/ COMPLAINANT
IN BOTH THE PETITIONS

Prayer in CRL MP(MD) . 3857/ 2018 :

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed on the petitioner and enlarge him on bail on the sentence imposed by judgment made in CA.NO.15/2014 dated 28.02.2017 on the file of the Honourable II Additional District and Sessions Judge, Thiruchirappalli whereby confirming the judgment made in CC.NO.06/2007 on the file of the Chief Judicial Magistrate, Thiruchirappalli dated 31.12.2013 pending disposal of the Crl.RC.

Prayer in CRL MP(MD) . 3858/ 2018 :

To exempt the petitioner from surrendering before the lower court in view of the judgment made in CA.NO.15/2014 dated 28.02.2017 on the file of the Honourable II Additional District and Sessions Judge, Thiruchirappalli whereby confirming the judgment made in CC.NO.06/2007 on the file of the Chief Judicial Magistrate, Thiruchirappalli dated 31.12.2013 pending disposal of the Crl.RC.

Order : These petitions coming on for orders upon perusing the petitions filed in support thereof and upon hearing the arguments of Mr.C.MUTHUSARAVANAN, Advocate for the petitioner in both the petitions and of Mr.NAGENDRAN, Additional Public Prosecutor for CBI cases on behalf of the Respondent in both the petitions the court made the following order:-

Heard Mr.C.Muthusaravanan, learned counsel appearing for the petitioner and Mr.Nagendran, learned Additional Public Prosecutor for CBI appearing for the respondent.



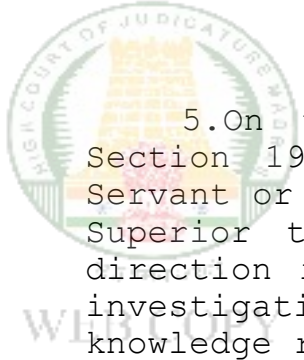
2.This Petition is filed to suspend the sentence passed against the petitioner imposed by the learned II Additional District and Sessions Judge, Thiruchirappalli in C.A.No.15 of 2014 dated 28.02.2017 pending disposal of the Revision case and to exempt the petitioner from surrendering before the lower Court.

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3.The case of the petitioner is that on 09.12.2001, a case in Crime No.559 of 2001 for the offences under Sections 279 and 338 of IPC is said to be registered at Ramji Nagar Police Station, Trichy on the basis of the complaint lodged by one Henry. It is further alleged that one Anand who is the driver of the vehicle TVS 50 bearing Registration No.TN-45-E-4116 hit the complainant on 07.12.2001 at Manigandam Panchayat Union Bus Stop. Therefore, the petitioner was charged for the rash and negligent driving. After completion of the investigation, charge sheet was taken on file and the same was ended in conviction.

4.Subsequently, a claim petition in M.C.O.P.NO.755 of 2002 for a sum of Rs.2,00,000/- (Rupees Two Lakhs only) was filed before the MCAT Court, Thiruchirappalli. It is further alleged that investigation reveals that there is some foul play by the petitioner colluding with the other accused and thereby committed the offence. As per the direction of this Court, the second respondent has investigated the case and re-registered the case in CBI/ACB/Chennai as RC MAI 2006 0034 dated 02.08.2006. The trial Court has convicted the petitioner and sentenced him to undergo Simple Imprisonment for six months for the offence under Section 120 (B) r/w. 182 of IPC and he was sentenced to undergo Simple Imprisonment for two years and to pay a fine of Rs.2,000/- (Rupees Two Thousand only) in default to undergo simple imprisonment for three months for the offence under Section 468 r/w. 471 of IPC and he was sentenced to under Simple Imprisonment for 1 ½ years and to pay a fine of Rs.2,000/- (Rupees Two Thousand only) in default to undergo simple imprisonment for three months for the offence under Section 420 r/w. 511 of IPC.

4.On the side of the petitioner, it is stated that in the year 2006, a Public Interest Litigation was filed before this Court and this Court directed the respondent to register a FIR. The petitioner is a practicing Advocate. Re-registering a FIR is bad and that there will be two conflicting judgments for the same cause of action. The learned Chief Judicial Magistrate, Thiruchirappalli has convicted an accused for rash and negligent driving and passed a Judgment which was not challenged or set aside. It is further stated that the allegation regarding the forgery documents cannot be taken into cognizance without a complaint from the concerned Court. Only the concerned Court or Tribunal wherein the forged documents are used, has to give the complaint under Section 197 Cr.P.C., The Police Officer who laid the chargesheet is not impleaded as an accused. The genuinity of the facts could not be known to the Advocates. It is further stated that there are so many other arguable points in the matter and prayed the sentence to be suspended till the disposal of the revision case.



5. On the side of the respondent, it is stated that under Section 195(1) Cr.P.C., the complaint can be given by a Public Servant or Superior Officer of the Public Servant. The High Court is Superior to the Tribunal and with regard to the High Court, a direction is itself enough, no written complaint is necessary. The investigation reveals that the Investigating Officer is having no knowledge regarding the false case as such the Police Officer is not impleaded in the case. It is further stated that before filing the M.C.O.P., itself, the petitioner took active participation and only with the direction of this petitioner, a case was registered based on the injury which is not caused by any accident. The Advocate filed the M.C.O.P., not on the instruction of the client, he has advised the client to file a false complaint and to file the false M.C.O.P., using the injuries which are not due to the accident.

6. On the side of the petitioner, it is stated that further investigation after the Judgment is not possible for the same cause of action and the direction of this Court cannot be treated as complaint.

7. On the side of the respondent, it is stated that a Judgment obtained by fraud cannot be taken as a genuine one.

8. On the side of the petitioner, it is stated that suspension of sentence has already been granted to the Co-accused and prayed to suspend the sentence imposed on him and to exempt the petitioner from surrendering before the lower Court.

9. Records perused. Considering the fact that the co-accused was already granted suspension of sentence and considering the fact that the entire case is based on records, this Court is inclined to grant suspension of sentence till 29.07.2018, on his executing a bond for a sum of Rs.1,00,000/- (Rupees One Lakh only) with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Chief Judicial Magistrate, Thiruchirappalli and on further condition that:

- (i) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Trial Judge may obtain a copy of their Aadhar Card or Bank Pass Book to ensure their identity.
- (ii) the petitioner shall appear before the Trial Court weekly once (I.e. Monday) at 10.30 a.m., until the disposal of the appeal and if he is not able to appear before the Trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C., and shall appear before the Trial Court on any other day in lieu of the date of his absence, as directed by the Trial Court.



(iii) The petitioner is not exempted from surrendering before the trial Court for the purpose of furnishing sureties.

(iv) The petitioner is directed to appear in person as and when required before this Court and before the trial Court.

(v) The petitioner has to co-operate with the Court for speedy disposal of the case.

7. Post on 29.07.2018 'for hearing the main appeal'.

sd/-
18/07/2018

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
THIRUCHIRAPPALLI.
2. THE CHIEF JUDICIAL MAGISTRATE, THIRUCHIRAPPALLI.
3. THE INSPECTOR OF POLICE, SPL CBI, ACB CHENNAI.
4. THE SPECIAL PUBLIC PROSECUTOR FOR CBI CASES,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to Mr.C.MUTHUSARAVANAN Advocate SR.No.13296

ORDER IN
CRL MP(MD) Nos.3857 and 3858 of 2018
IN CRL RC(MD) No.281 of 2018
Date :18/07/2018

MS/VR/VK/20.07.2018/4P.6C