

IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Criminal Jurisdiction )

Wednesday, the Fourth day of September Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice A.D.JAGADISH CHANDIRA

CRIMINAL MISCELLANEOUS PETITION

No.12651,12652,12656,12657,12673,12675 of 2019

IN CRL.RC.NOS.860,861,862 OF 2019.

G.SURESH BABU

[ PETITIONER ]

Vs

D.VIJAYAKUMAR

[ RESPONDENT ]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case Nos.860,861,862/2019 on the file of the High Court, the High Court will be pleased to

[i]suspend the sentence imposed against the petitioner in Crl.A.No.100,99,98/2018 on the file of the Learned Additional District Judge,[Fast Track Court],Vellore,vellore District dated 31.01.2019 and enlarge the petitioner on bail pending disposal of the said crl.Rc.No.860,861 & 862/2019.[CRL.MP.NO.12651,12656,12673/2019]

[ii]allow the petition for exempting the petitioner from his surrender the judgement and sentence passed by the learned 1<sup>st</sup> Additional District and Sessions Judge,Vellore,Vellore District in Crl.A.No.100,99,98/2018 dated 31.01.2019 ppending disposal of the Crl.RC.No.860,861 & 862/2019.[CRL.MP.NOS.12652,12657,12675/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.860,861,862/2019 on the file of the High Court and upon hearing the arguments of M/S.E.KANNADASAN, Advocate for the petitioner the court made the following order:-

1.Crl.MP.Nos.12651,12656,12673 of 2019 have been filed to suspend the respective sentences, imposed on the Petitioner/ accused in Crl.A.Nos.100, 99, 98 of 2018, respectively, by the learned Additional District Judge, (Fast Track Court), Vellore, by judgement, dated 31.01.2019 and to enlarge the Petitioner on bail, pending disposal of the above Criminal Revision Cases.

2. Crl.MP.Nos.12657,12672, 12675 of 2019 have been filed for exempting the petitioner from his surrender, pursuant to the

Judgement of conviction and sentence, passed by the learned I Additional District and Sessions Judge, Vellore District, in CrI.A.Nos.100, 99, 98 of 2018 respectively, dated 31.01.2019, pending disposal of the Criminal Revision Cases.

3.The facts, in a nutshell, are that in all the cases, the Petitioner is one and the same person. The Petitioner / accused had borrowed a sum of Rs.6,00,000/- from the respondent on 07.04.2011 and agreed to repay the said sum with interest @ 24% per annum. The Petitioner / accused had also executed three promissory notes, in favour of the respondent each for a sum of Rs.2,00,000/-. When the respondent had demanded the principal amount, the Petitioner had issued three cheques dated, 20.06.2011, 22.06.2011 and 25.06.2011, bearing Nos.947788, 947790 947789, respectively, each for a sum of Rs.2,00,000/-, but when the said three cheques were presented for encashment, the same were dishonoured on the ground of insufficiency funds. Thereafter, the respondent had issued a lawyer's notice on 20.07.2011 to the Petitioner/ accused, to which, the Petitioner had given a reply on 04.08.2011, with false allegations and denying the issuance of cheques in question. Hence, the respondent had filed three separate complaints against the Petitioner under Section 138 of of the Negotiable Instruments Act, before the Judicial Magistrate, (Fast Track Court), Vellore District, which were taken on file in CC.Nos.31, 30 and 32 of 2012, wherein, the Petitioner was acquitted, by judgement, dated 05.10.2012. Aggrieved over the said acquittal order, the complainant had preferred appeals before this Court under Section 378(1) of Cr.PC in CrI.A.Nos.886, 885, 884 of 2012, respectively, which were remanded back to the lower appellate court for disposal afresh and the Additional District Judge, (Fast Track Court), Vellore District had taken the appeals on file in Cr.A.Nos.100,, 99 and 98 of 2018, wherein, the lower appellate court, while setting aside the order of acquittal, had convicted the Petitioner / accused under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for one year and had further directed the Petitioner to pay a sum of Rs.2,00,000/- as compensation to the respondent under Section 357 of Cr.PC, in each case, failing which, the said amount was ordered to be recovered as that of recovery of fine amount in the manner known to law. As against the said judgement of conviction and sentence, the present Criminal Revision Cases have been filed, along with above CrI.MPs, seeking the reliefs as stated above.

4.This court heard the learned counsel on either side and also perused the materials placed on record.

5.The learned counsel for the Petitioner/accused would submit that there are arguable points available in the Criminal Revision Cases and that the Petitioner has got a fair chance of succeeding in the Criminal Revision Cases and would pray that the substantive sentences imposed against the Petitioner may be suspended. He would submit that the Trial Court had acquitted him and thereafter, on the appeals filed by the complainant, the order of acquittal was set aside and the present Revision Cases have been filed against conviction. He would also submit that the fine amount has been paid

and the Trial Court had also suspended the sentence of imprisonment and that a memo was filed before the Trial Court, seeking extension of suspension of sentence, however, it had been rejected by the Trial Court. He would further submit that the Petitioner is prepared to pay 20% of the cheque amount without prejudice to the rights of the Petitioner before the Trial Court.

6.Considering the facts and circumstances of the case and also considering the submission of the learned counsel for the Petitioner/accused that there are arguable points involved in the revision petitions and further, the revision petitions are not likely to be taken up for final hearing in the near future, this Court is of the view that the Petitioner/ accused herein is entitled to the relief of suspension of sentence. Accordingly, the substantive sentences of imprisonment imposed on the Petitioner / accused in all cases alone are hereby suspended, till the disposal of the Criminal Revision Cases and the reliefs of exemption from surrender before the Court, suspension of sentence and bail are granted on the following conditions :-

a)The Petitioner/ accused shall deposit 20% of the cheque amounts (in all Rs.6,00,000/-), namely, Rs.1,20,000/- (Rupees One Lakh Twenty Thousands Only) before the Trial Court, within four weeks from the date of receipt of a copy of this order and on such deposit being made the Trial Court shall redeposit the said amount in a fixed deposit account in any nationalised bank, so that the amount accrues interest. The disbursal of this amount shall be decided at the culmination of the revision petitions. Thereafter, the Petitioner/accused is ordered to be released on bail, on his executing a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the Judicial Magistrate, (Fast Track Court), Vellore District, in each case.

b)The Petitioner/ accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the Magistrate may obtain a copy of their Aadhaar cards or Bank pass Book to ensure their identities.

c)The Petitioner/ accused shall appear before the Trial Court at 10.30 a.m. on the first working day of every month until the disposal of the revision petitions 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 of Cr.PC. 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.

d)On the failure of the Petitioner/ accused depositing the said amount, it is open to the Trial Court to commit the Petitioner/ accused into custody for undergoing the sentence.

-sd/-

04/09/2019

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 I ADDITIONAL DISTRICT JUDGE  
[FAST TRACK COURT]VELLORE

2 THE CHIEF JUDICIAL MAGISTRATE  
VELLORE [FOR INFORMATION]

+3 C.C. to M/S.E.KANNADASAN Advocate on payment of necessary charges SR.NO. 18589,18590,18591

Order

in

CRL MP.NOS.12651,12652,12656,12657,12673,12675/2019

IN CRL.RC.NOS.860,861,862 OF 2019.

Date :04/09/2019

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format  
RD 09/09/2019