

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Fifteenth day of November Two Thousand Nineteen

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION NOS.15266 & 15267 OF 2019

IN CRL.RC.NO.1141 OF 2019

SUMITKUMAR
PROPRIETOR,
M/S. LITE COMPUTERS

[PETITIONER / APPELLANT / ACCUSED]

Vs

M/S.REDINGTON (INDIA) LTD
REP BY, MR.M. SUNDARARAJAN,
SENIOR LEGAL EXECUTIVE SPL,
GUINDY HOUSE,
95, MOUNT ROAD,
GUINDY, CHENNAI-32

[RESPONDENT]

Petitions praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.RC.NO.1141 OF 2019 on the file of the High Court, the High Court will be pleased to

[i] suspend the sentence imposed by the Fast Track Court -3, (Metropolitan Magistrate), Saidapet, Chennai in C.C.No.2508/2012 dated 18/10/2016 and confirmed by the learned V Additional Sessions Judge at Chennai in Crl.A.No.291/2016 dated 28.02.2019 until disposal of the CRL.RC.NO.1141 OF 2019 [CRL.MP.NO.15266 OF 2019]

[ii] grant exemption to the petitioner from surrender before the trial court in C.C.No.2508/2012 dated 18/10/2016 by learned the Fast Track Court -3 (Metropolitan Magistrate), Saidapet, Chennai in C.C.No.2508/2012 and confirmed by the learned V Additional Sessions Judge at Chennai in Crl.A.No.291/2016 dated 28.02.2019 until disposal of the CRL.RC.NO.1141 OF 2019 [IN CRL.MP.NO.15267 OF 2019]

Order : These petitions coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.RC.NO.1141 OF 2019 on the file of the High Court and upon hearing the arguments of M/S.M.ANANDARAJ, Advocate for the petitioner and of M/S.V.T.NARENDIRAN Advocate on behalf of the Respondent the court made the following order:-

- 1.These Criminal Miscellaneous Petitions have been filed by the Petitioner/Accused, to suspend the sentence of imprisonment, imposed by the judgment, dated 18.10.2016, made in C.C.No.2508/2012, by the Metropolitan Magistrate, Fast Track

Court No.III, Saidapet, Chennai, as confirmed the judgment dated 28.02.2019, made in CrI.A.No.291/2016, by the V Additional Sessions Judge, Chennai and to exempt the petitioner from surrendering before the Trial Court, dated 18.10.2016, made in C.C.No.2508/2012, by the Metropolitan Magistrate, Fast Track Court No.III, Saidapet, Chennai, respectively, pending disposal of the Criminal Revision Case.

- 2.This court heard the submissions made by the learned counsel on either side and also perused both the impugned Judgments.
- 3.In and by both the impugned judgements of the Trial Court and the Appellate Court, the Petitioner/Accused, was convicted for the offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo Six Months Simple Imprisonment and to pay an amount of Rs.1,32,61,732/- [Rupees One Crore Thirty Two Lakhs Sixty One Thousand Seven Hundred and Thirty Two Only].
- 4.The learned counsel for the Petitioner/Accused, would submit that during the pendency of the appeal, the petitioner has deposited 5% of the cheque amount, before the Trial Court. He would submit that there are arguable points available in the Criminal Revision Case and that the revision petition is not likely to be taken for final hearing in the near future and that the petitioner has got a fair chance of succeeding in the Criminal Revision Case and would pray that the substantive sentence imposed against the Petitioner/Accused may be suspended on condition of depositing some amount.
- 5.The learned counsel for the respondent would submit that during the pendency of appeal, he had deposited 5% of the cheque amount, before the Trial Court.
- 6.The learned counsel for the respondent would submit that the petitioner has not given proper address and that the petitioner hails from Varanasi and that if suspension of sentence is granted, there is a possibility he would abscond. Further, he would submit that the complainant is a company and based on the purchase orders, the complainant company has supplied computers and peripherals to the tune of Rs.1,32,61,732/- and that the supplies were made during the year 2011 and the cheque issued towards discharge of the amount, during the year 2012 had not been honoured. The complaint had been filed in the year 2012 and the Trial Court as well as the Appellate Court, finding that the complainant has proved the case beyond all reasonable doubt have found the accused guilty and convicted him. He would further submit that C.C.No.2508/2012 is of the year 2012 and that the trial was delayed by the accused for four years and the Trial Court convicted the accused during the year 2016 and it has taken two years before the Appellate Court and that the revision itself had been filed with delay. He would further submit that the petitioner/accused had been wilfully protracting the proceedings.

7. Considering the facts and circumstances of the case and also considering the submissions of the learned counsel on either side, this Court is of the view, that the substantive sentence of imprisonment alone can be suspended on certain conditions. It is stated that the petitioner has deposited 5% of the cheque amount, during the pendency of appeal. Accordingly, till the disposal of the Criminal Revision Case, the reliefs of exemption from surrendering before the Trial Court, suspension of sentence and bail are granted on the following conditions :-

- a) The Petitioner/Accused shall deposit a sum of Rs.59,67,780/- (Rupees Fifty Nine Lakhs Sixty Seven Thousand Seven Hundred and Eighty Only), which is 45 % of the cheque amount, before the Trial Court, within a period of 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 nationalized bank, so that the amount accrues interest. The disbursal of this amount shall be decided at the culmination of the revision petition. 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 each, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Metropolitan Magistrate, Fast Track Court No.III, Saidapet, Chennai.
- 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 Passport or Bank Pass Books to ensure their identities.
- c) The Petitioner/Accused shall appear before the Trial Court at 10.30a.m., on the first working day of every month, until the disposal of the revision petition 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 the custody for undergoing the sentence.

Post the matter on 13.12.2019 for "reporting compliance".

-sd/-
15/11/2019

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 THE METROPOLITAN MAGISTRATE,
FAST TRACK COURT NO.III,
SAIDAPET, CHENNAI.

2 THE CHIEF METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI [FOR INFORMATION]

3 THE V ADDITIONAL SESSIONS
JUDGE, CHENNAI.

+1C.C. to M.ANANDARAJ Advocate on payment of necessary
charges SR NO.23566

Order
in
CRL MP.15266 & 15267 OF 2019
in
CRL.RC.NO.1141 OF 2019

Date :15/11/2019

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

MK:09/12/2019