

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Sixth day of September Two Thousand Nineteen

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION No.12698 of 2019

IN CRL.R.C.NO.863 of 2019

1 M/S.V.L.TECH [PETITIONERS]
REP.BY ITS PROPRIETOR,
N.GNANAVEL,

2 N.GNANAVEL

Vs

K.GANESH [RESPONDENT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(i) To suspend the sentence to the accused made in C.A.No.126 of 2017 dated 25.01.2019 on the file of the Principal District and Sessions Judge, at Tiruvallur filed against the order dated 27.03.2017 passed in S.T.C.No.212 of 2016 on the file of the learned Magistrate Fast Track Court (Magisterial Level-II) Poonamallee, Pending disposal of the above Crl.R.C.No.863 of 2019.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.K.VIJAYARAGAVAN, Advocate for the petitioners, and of MR. M.MOHAMED RIYAZ, Additional Public Prosecutor, on behalf of the Respondent, the court made the following order:-

1.This Criminal Miscellaneous Petition has been filed to suspend the sentences, imposed on the Petitioner/A2 in Crl.A.No.126 of 2017, by the learned Principal District and Sessions Judge, (Fast Track Court), Tiruvallur, by judgement, dated 25.01.2019 and to enlarge the Petitioner/A2 on bail, pending disposal of the above Criminal Revision Case.

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

3.The facts, in a nutshell, are that there are two accused in this case, namely, the Petitioners/A1 and A2. A1 is the Proprietorship Company, represented by its Proprietor, A2. Petitioners/ accused had borrowed a sum of Rs.10,00,000/- from the Respondent/ complainant on 06.01.2012, under a promissory note and that on demand, the Petitioners/ accused had issued two cheques each for a sum of Rs.5,00,000/- bearing no.534705, dated 15.03.2014 and no.534706, dated 15.04.2014. When the said cheques were presented on 09.05.2014 for encashment, they were returned unpaid on the ground of insufficient funds, on 10.05.2014. Hence, a legal notice dated 21.05.2014 was issued by the complainant and a reply was caused on 05.06.2014. Thereafter, no reply was received from the Petitioners/ accused. Hence, the complainant had filed a private complaint for the offences under Sections 138 and 142 of the Negotiable Instruments Act, before the Judicial Magistrate, FTC, Magisterial Level II, Poonamallee, in STC.No.212 of 2016, wherein the Petitioner/A2 respondent was found guilty for the offence under Section 138 of the Negotiable Instruments Act and convicted and sentenced him to undergo six months Simple Imprisonment and to pay a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only) towards compensation under Section 357(3) of Cr.PC, in default, to undergo two weeks Simple Imprisonment. As against the said judgement of conviction and sentence, the Petitioners/ accused had preferred an appeal in CA.No.126 of 2017, before the Principal Sessions Judge, Tiruvallur and the said appeal was dismissed, by the impugned judgement. Hence, the above Criminal Revision Case has been filed, along with above Crl.MP, seeking the relief as stated above.

4.The learned counsel for the Petitioner/accused would submit that there are arguable points available in the Criminal Revision Case and that the revision petitions is not likely to be taken for final hearing in the near future and that the Petitioners have got a fair chance of succeeding in the Criminal Revision Case and would pray that the substantive sentence imposed against the Petitioner/A2 may be suspended.

5.The learned Additional Public Prosecutor would vehemently oppose for granting suspension of sentence.

6.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 sentences of imprisonment alone can be suspended on certain conditions. Accordingly, the substantive sentence of imprisonment imposed on the Petitioner/A2 alone is hereby suspended, till the disposal of the Criminal Revision Cases and the Petitioner/A2 is hereby ordered to be enlarged on bail on the following conditions :-

- a) The Petitioner/ A2 shall deposit 50% of the cheque amounts (in all Rs.10,00,000/-), namely, Rs.5,00,000/- (Rupees Five Lakhs 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 petition. Thereafter, the Petitioner/ A2 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), Magisterial Level II, Poonamallee.

- b) The Petitioner/A2 and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the Magistrate may obtain a copy of his Aadhaar Card or Bank pass Book to ensure his identities.
- c) The Petitioner/ A2 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 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/A2, depositing the said amount, it is open to the Trial Court to commit the Petitioner/ A2 into custody for undergoing the sentence.

7. Post the matter on 14.09.2019 for reporting compliance.

-sd/-
06/09/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

सत्यमेव जयते
TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL DISTRICT
AND SESSIONS JUDGE, THIRUVALLUR.

2 THE MAGISTRATE FAST TRACK
COURT (MAGISTERIAL LEVEL-II) POONAMALLEE.

+1 C.C. to M/S.K.VIJAYARAGAVAN Advocate on payment of necessary charges SR.NO.18913

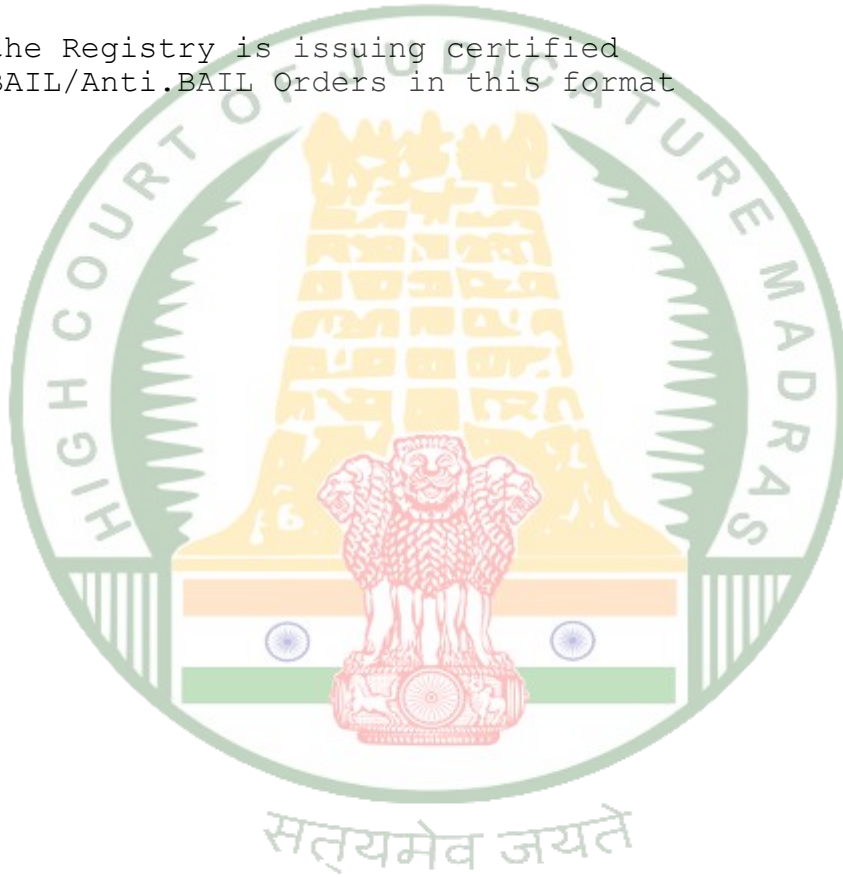
Order

in
CRL MP.12698/2019
in
CRL.R.C.NO.863/2019

Date :06/09/2019

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TA-13/09/2019



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