

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.12808 of 2019

IN CRL.RC.NO.877 OF 2019

D.RAMALINGAM

[PETITIONER]

vs

K.RAJAGOPAL

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.RC.NO.877 OF 2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner by the judgment dated 08.04.2019 passed in C.A.No.178/2017 on the file of the Principal Sessions Judge, Tiruvallur confirming the judgment dated 01.11.2017 passed in S.T.C.No.16/2017 on the file of the Judicial Magistrate Court, Fast Track Court, (Magisterial Level-II) Poonamallee, pending disposal of the above CRL.RC.NO.877 OF 2019 [IN CRL.MP.NO.12808 OF 2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.RC.NO.877 OF 2019 on the file of the High Court and upon hearing the arguments of M/S.N.GNANALINGAM, Advocate for the petitioner and of MR.M.MOHAMED RIYAZ, ADDITIONAL PUBLIC PROSECUTOR 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 08.04.2019 made in Crl.A.No.178/2017, by the Principal Sessions Judge, Thiruvallur, confirming the judgment, dated 01.11.2017 passed in STC.No.16 of 2017, by the Judicial Magistrate Court, Fast Track Court, (Magisterial Level-II), Poonamallee and to exempt the Petitioner from surrendering before the Trial Court, in connection with the conviction and sentence, imposed in STC.No.16 of 2017, by the Judicial Magistrate Court, Fast Track Court, (Magisterial Level-II), Poonamallee, by judgement, dated 01.11.2017, respectively, pending disposal of the 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 the Petitioner/ accused had borrowed a sum of Rs.2,00,000/- from the complainant for his family expenses on 25.10.2014 and on the same day, he had executed a loan deed. On demand, in order to discharge the said loan amount, the Petitioner/ accused had issued a cheque, dated 17.10.2016, bearing No.170158, for a sum of Rs.2,00,000/-. When the said cheque for presented for collection on 20.10.2016, it was returned unpaid on the ground of insufficient funds, on 24.10.2016. Hence, a legal notice, dated 02.11.2016, came to be issued by the complainant and the said legal notice was returned as "Unclaimed" on 17.11.2016 and thereafter, there was no reply from the Petitioner/ accused. Hence, the complainant had filed a private complaint for the offence under Section 138 of the Negotiable Instruments Act, before the Judicial Magistrate, FTC, Magisterial Level II, Poonamallee, in STC.No.16 of 2017, wherein the Petitioner/ accused was found guilty for the offence under Section 138 of the Negotiable Instruments Act and convicted and sentenced to undergo twelve months Simple Imprisonment and to pay a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) as compensation to the complainant, in default, to undergo three weeks Simple Imprisonment. As against the said judgement of conviction and sentence, the Petitioner/ accused had preferred an appeal in CA.No.178 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.MPs, 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 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 and that the Petitioner may be exempted from surrendering before the Trial Court.

5.Considering the facts and circumstances of the case and also considering the submissions of the learned counsel, this Court is of the view that the substantive sentence of imprisonment alone can be suspended on certain conditions. Accordingly, till the disposal of the Criminal Revision Case, 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 50% of the cheque amount (Rs.2,00,000/-), namely, Rs.1,00,000/- (Rupees One Lakh 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 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, 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/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 Books 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 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/ A2 into custody for undergoing the sentence.

6. Post the matter on 14.10.2019 for reporting compliance.

-sd/-
06/09/2019

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 THE PRINCIPAL SESSIONS JUDGE,
TIRUVALLUR.

2 THE JUDICIAL MAGISTRATE,
FAST TRACK COURT [MAGISTERIAL LEVEL-II]
POONAMALLEE.

3 THE CHIEF JUDICIAL MAGISTRATE
THIRUVALLUR [FOR INFORMATION]

+1C.C. to M/S.N.GNANALINGAM Advocate on payment of necessary charges SR NO.18699

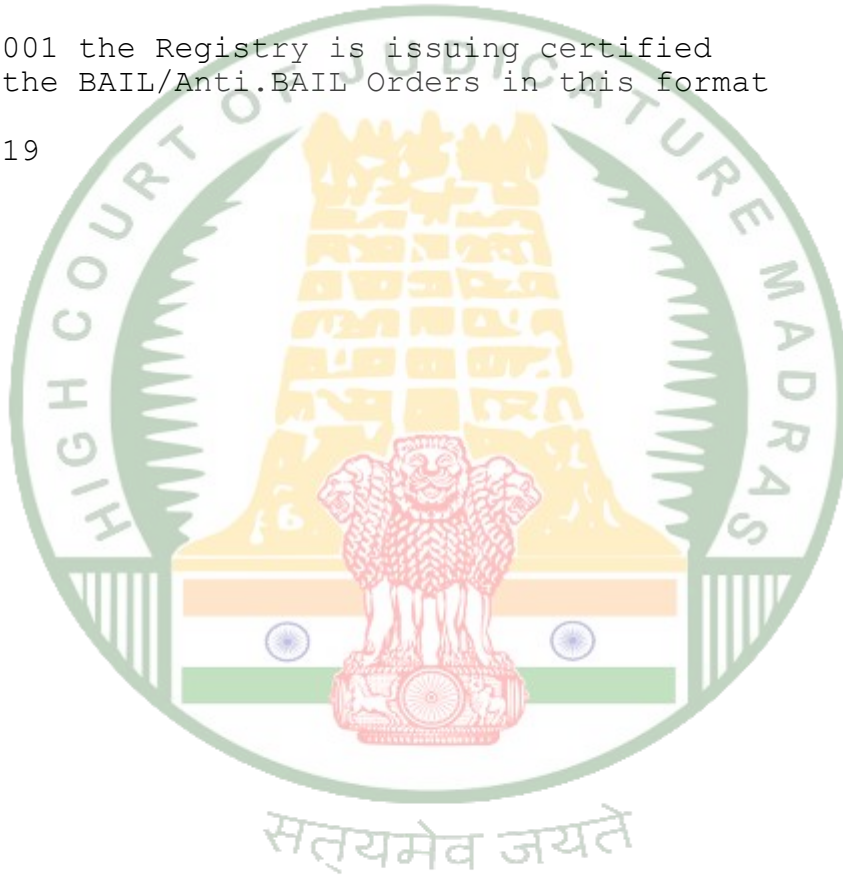
Order

in
CRL MP.12808/2019
in
CRL RC.877/2019

Date :06/09/2019

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MK:13/09/2019



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