

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Sixteenth day of September Two Thousand Nineteen

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION No.12100 & 12101 of 2019

in CRL.RC.NO.826 OF 2019

P.VASUDEVAN

[PETITIONER]

vs

C.DURAISAMY

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.826/2019 on the file of the High Court, the High Court will be pleased to

[I]suspend the sentence of imprisonment imposed in the judgment dated 07.01.2019 made in S.T.C. No.670 of 2017 on the file of the Judicial Magistrate, Kodumudi which was confirmed in the judgment dated 18.07.2019 made in C.A.No.40 of 2019 on the file of the principal district and Sessions Judge, Erode and enlarge the petitioner on bail pending disposal of the above revision petition. [CRL.MP.NO.12100/2019]

[II]exemption from surrendering before the trial court in pursuance to the Judgment dated 18.07.2019 made in C.A.No.40 of 2019 on the file of the principal district and Sessions Judge, Erode confirming the conviction imposed the judgment dated 07.01.2019 made in S.T.C.No.670 of 2017 on the file of the Judicial Magistrate Kodumudi, Erode pending disposal of the above Revision Petition..[CRL.MP.NO.12101/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.826/2019 on the file of the High Court and upon hearing the arguments of M/S.J.JAWAHAR, Advocate for the petitioner the court made the following order:-

1.This Criminal Miscellaneous Petition has been filed to suspend the sentences, imposed on the Petitioner/Accused in S.T.C.NO.670/2017, by the learned Judicial Magistrate, Kodumudi by judgement, dated 07.01.2019, confirming the conviction imposed in Judgment dated 18.07.2019 in C.A.No.40/2019, on the file of the learned Principal Sessions Judge of Erode and to enlarge the Petitioner/Accused on bail, pending disposal of the above Criminal Revision Case.

2.Crl.MP.No. 12101 of 2019 has been filed for exempting the Petitioner from his surrender, pursuant to the judgement of conviction and

sentence, passed by the learned Principal Sessions Judge of Erode by judgement dated 18.07.2019, pending disposal of the criminal revision case.

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

4. The facts, in a nutshell, are that, on 14.05.2017, the petitioner/accused herein had borrowed a sum of Rs.5,00,000/- from the complainant for his urgent expenses, promising to repay the same within a stipulated time and to discharge the said liability, on 12.06.2017 the petitioner had issued a cheque drawn on Indian Overseas Bank, Erode Branch, for a sum of Rs.5,00,000/- bearing No.409768. When the said cheque was presented on the same day through Kauru Vysys Bank, K.Othakadai Branch, for encashment, that was returned on 13.06.2017 unpaid on the ground of insufficient funds. Hence, a statutory notice dated 15.06.2017 was issued by the complainant. The notice was received by the petitioner on 16.06.2017 and even after receipt of the same the petitioner had sent a reply notice dated 29.06.2017 with false averments and the accused did not pay the cheque amount. Hence, the complainant had filed a complaint for the offence under Section 138 of the Negotiable Instruments Act, before the learned District Munsif-cum- Judicial Magistrate, Kodumudi, in STC.No.670/2017, wherein the Petitioner/Accused was found guilty for the offence under Section 138 of the Negotiable Instruments Act, 1881 and convicted and sentenced him to undergo one year Simple Imprisonment and to pay a sum of Rs.5,00,000/- (Rupees Five lakhs Only) towards compensation, in default to undergo simple imprisonment for one month for the offence u/s 138 of Negotiable Instruments Act. As against the said judgement of conviction and sentence, the Petitioner/Accused had preferred an appeal in CA.No.40 of 2019, before the Principal Sessions Judge of Erode 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.

5. 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. He would further submit that without prejudice his contention the petitioner is prepared to deposit 50% of the cheque amount, pending revision.

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 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 25% of the cheque amount (Rs.5,00,000), viz., Rs.1,25,000/- (Rupees One Lakh Twenty Five Thousand 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/ 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 District Munsif-cum-Judicial Magistrate Kodumudi, Erode

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 his Aadhaar Card or Bank pass Book to ensure his 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/ Accused into custody for undergoing the sentence.

7. Post the matter on 16.10.2019 for reporting compliance.

WEB COPY
-sd/-
16/09/2019

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.

[*]for being mentioned as per the order of this court dated 17/09/2019 made in CRL.MP.NO.12100 OF 2019 IN CRL.RC.NO.826 OF 2019.

TO

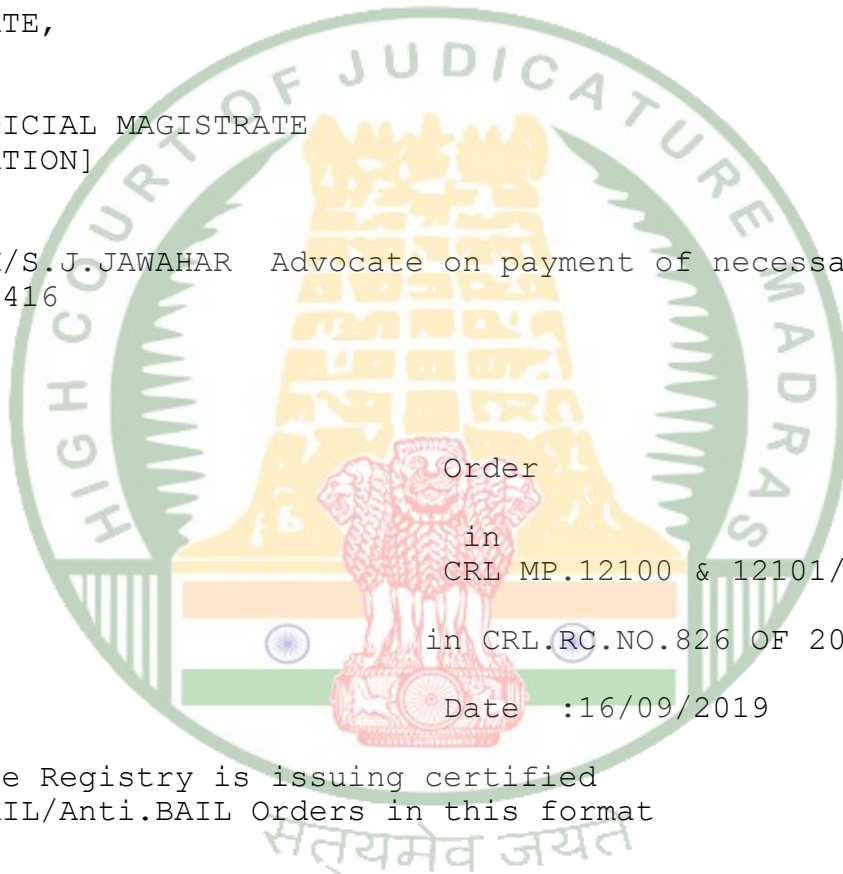
1 THE JUDICIAL MAGISTRATE,
KODUMUDI

2 THE PRINCIPAL SESSIONS JUDGE
ERODE

3 THE DISGTRICT MUNSIF CUM
JUDICIAL MAGISTRATE,
KODUMUDI, ERODE

4 THE CHIEF JUDICIAL MAGISTRATE
ERODE[FOR INFORMATION]

+1 C.C. to M/S.J.JAWAHAR Advocate on payment of necessary charges SR.NO. 19416



From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format
RD 16/09/2019
RD 17/09/2019

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