

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Ninth day of September Two Thousand Nineteen

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION Nos.12719 & 12720 of 2019

IN CRL.RC.NO.865 OF 2019

M.VIRUPAKSHA

[PETITIONER / PETITIONER]

Vs

P.K.DASAPRAKASH

[RESPONDENT / RESPONDENT]

Petitions praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.865/2019 on the file of the High Court, the High Court will be pleased to

[i] suspend the sentence of imprisonment imposed on the petitioner in the judgment dated 10.08.2019 made in C.A.No.392 of 2018 on the file of the Third Additional District and Sessions Court, Erode at Gobichettipalayam which confirms the conviction imposed in the judgment dated 29.11.2018 made in STC.No.2628 of 2010 on the file of the learned Judicial Magistrate No.1, Gobichettipalayam and enlarge the petitioner on bail pending disposal of the above Crl.RC.No.865/2019. [IN CRL.MP.NO.12719/2019]

[ii] grant an order of exemption from surrendering before the trial Court pursuant to the judgment dated 10.08.2019 made in C.A.No.392 of 2018 on the file of the Third Additional District and Sessions Court, Erode at Gobichettipalayam which confirms the conviction imposed in the judgment dated 29.11.2018 made in STC.No.2628 of 2010 on the file of the learned Judicial Magistrate No.1, Gobichettipalayam, pending disposal of the above Crl.RC.No.865/2019. [IN CRL.MP.NO.12720/2019]

Order : These petitions coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.865/2019 on the file of the High Court and upon hearing the arguments of M/S. N.MANOKARAN, Advocate for the petitioner the court made the following order:-

1.These Crl.MP.Nos.12719 & 12720 of 2019 have been filed to suspend the sentence, imposed on the Petitioner/ accused in STC.No.2628 of 2010, by the Judicial Magistrate No.I, Gobichettipalayam, by the judgement, dated 29.11.2018, as confirmed in Crl.A.No.392 of 2018, by the judgement dated 10.08.2019, by the III Additional District and Sessions Court, Erode at Gobichettipalayam, and to exempt the Petitioner from surrendering before the trial court in connection with the conviction and sentence imposed in STC.No.2628 of 2010, by

the Judicial Magistrate No.I, Gobichettipalayam by the judgement, dated 29.11.2018, respectively, pending disposal of the Criminal Revision Case.

2.The facts, in a nutshell, are that the respondent herein had filed a private complaint in STC.No.2628 of 2010 before the learned Judicial Magistrate No.I, Gobichettipalayam, against the petitioner and his wife/A2, alleging that the petitioner and his wife were jointly carrying on the business of purchasing and selling Sesame and that on 21.05.2010, they had purchased sesame for a value of Rs.36 lakhs from the respondent and issued a cheque bearing No.013700 dated 21.05.2010 from the joint account for a sum of Rs.36 lakhs towards the payment of the above said purchase and when the respondent presented the said cheque for collection on 21.05.2010, the same was returned on 24.05.2010 on the ground of insufficient funds. Hence, the respondent had issued a legal notice dated 08.06.2010, seeking payment of the cheque amount. Since the cheque amount was not paid, he filed the complaint under section 138 of the Negotiable Instruments Act before the Judicial Magistrate No.I, Gobichettipalayam in STC.No.2628 of 2010, wherein the Trial Court had found the Petitioner/ accused guilty of 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 compensation of Rs.36,00,000/- [Rupees Thirty Six Lakhs only] to the complainant. In the appeal in Crl.A.No.392 of 2018, filed by the Petitioner/ accused, by the impugned judgement, the conviction and sentence passed by the Trial Court was confirmed. Hence, the present Criminal Revision Case has been filed, along with above Crl.MPs, seeking the reliefs as stated above.

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

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. He would further submit that without prejudice to the rights of the Petitioner/ accused, he is ready and willing to deposit a sum of Rs.10,00,000/- in two instalments, each for Rs.5,00,000/-, within a time frame to be stipulated by this Court.

5.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 a sum of Rs.10,00,000/- (Rupees Ten Lakhs Only), in two instalments, each for a sum of Rs.5,00,000/-, in the following manner:-

i. The first instalment of Rs.5,00,000/- (Rupees Five Lakhs only) shall be deposited on or before 07.10.2019.

ii. The second instalment of Rs.5,00,000/- (Rupees Five Lakhs only) shall be deposited within a period of four weeks from the date of the above said first instalment.

(b) On deposit of the above said first instalment being made within the said period, 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 for a like sum to the satisfaction of the **(*)Judicial Magistrate No.I, Gobichettipalayam.**

(c) On such deposit of above said two instalments, 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 Criminal Revision Case.

(d) 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.

(e) 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.

(f) 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 15.10.2019 for reporting compliance in respect of the deposit of the first installment.

-sd/-

09/09/2019

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

TRUE COPY

(*) Amended as per order of this Court dated 31/10/2019 made in
Crl.MP.No.15620/2019 in Crl.RC.No.865/2019

TO

1 THE JUDICIAL MAGISTRATE,
NO.I, GOBICHETTIPALAYAM

2 THE CHIEF JUDICIAL MAGISTRATE
ERODE [FOR INFORMATION]

3 THE III ADDITIONAL DISTRICT
AND SESSIONS COURT, ERODE

4 THE JUDICIAL MAGISTRATE,
(FAST TRACK COURT), MAGISTERIAL LEVEL-II,
POONAMALLEE

5 THE CHIEF JUDICIAL MAGISTRATE
THIRUVALLUR [FOR INFORMATION]

C.C. to M/S. N.MANOKARAN Advocate on payment of necessary
charges

Order

in
CRL MP.Nos.12719 & 12720/2019

in
CRL.RC.No.865/2019

Date :09/09/2019

सत्यमेव जयते

From 7.2.2001 the Registry is issuing certified
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cs 06/11/2019

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