

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Fifth day of September Two Thousand Nineteen

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION NOS.12745 & 12746 OF 2019

IN CRL.RC.NO.868 OF 2019

A.RAJASEKAR

[PETITIONER / APPELLANT / ACCUSED]

Vs

SIVABALAN

[RESPONDENT]

Petitions praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.RC.NO.868 OF 2019 on the file of the High Court, the High Court will be pleased to

[i] suspend the imprisonment imposed on to the petitioner by the Appellate Court and judgment dated 01.07.2019 made in C.A.No.284 of 2017 (on the file of the 1st Additional District and Sessions Judge, Erode) confirming the judgment dated 06.10.2017 made in S.T.C.NO.281 of 2016 on the file Judicial Magistrate, Fast Track No.I, Erode, in CRL.RC.NO.868 OF 2019 [IN CRL.MP.NO.12745 OF 2019]

[ii] exempt the petitioner to surrender before the appellate Court on the judgment dated 01.07.2019 made in C.A.No.284 of 2017 (On the file of the 1st Additional District and Sessions Judge, Erode) confirming the judgment dated 06.10.2017 made in S.T.C. NO.281 of 2016 on the file Judicial Magistrate, Fast Track No.I, Erode, in CRL.RC.NO.868 OF 2019 [IN CRL.MP.NO.12746 OF 2019]

Order : These petitions coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.RC.NO.868 OF 2019 on the file of the High Court and upon hearing the arguments of M/S.C.S.SARAVANAN, 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.Crl.MP.No.12745 of 2019 has been filed to suspend the sentence, imposed on the Petitioner/ accused, by the Appellate Court and judgement dated 01.07.2019 made in Crl.A.No.284 of 2017 on the file of the learned Additional District and Sessions Judge, Erode, confirming the judgement, dated 06.10.2017 and pending disposal of the above Criminal Revision Case.

- 2.Crl.MP.No.12746 of 2019 has been filed for exempting the Petitioner from his surrender, pursuant to the Judgement of conviction and sentence, passed by the Appellate Court and judgement dated 01.07.2019 made in Crl.A.No.284 of 2017 on the file of the learned Additional District and Sessions Judge, Erode, confirming the judgement, dated 06.10.2017, pending disposal of the Criminal Revision Case.
- 3.The facts, in a nutshell, are that the Petitioner / accused had borrowed a sum of Rs.2,50,000/- from the complainant for his urgent expenses. To discharge the said liability the accused had issued a cheque bearing No.364489 for Rs.2,50,000/- dated 08.07.2016 drawn on IDBI Bank, Erode Branch, Erode and the same was returned dishonoured as Account Blocked on 26.07.2016 and without sufficient funds in the accused account, the accused had issued the above said cheque. On 30.07.2016 the complainant had issued registered legal notice to the accused calling upon him to pay the cheque amount of Rs.2,50,000/- due under the cheque dated 08.07.2016 within 15 days from the date of receipt of the legal notice. The accused had received the notice on 01.08.2016 and not repaid the cheque amount and therefore, the complainant preferred the complaint before the learned Magistrate Court. Before the trial Court, on the side of the respondent, the complainant Mr.Sivabalan was examined as PW.1 and Ex.P1 to P.7 were marked and on the side of the appellant/accused one Mr.Annadurai was examined as D.W.1 and no documentary evidence on his side. On hearing both sides and on consideration of the entire evidence, the Judicial Magistrate, Fast Track No.I, Erode had convicted and sentenced the accused for the offence under section 138 of Negotiable Instrument Act, to undergo simple imprisonment for a period of six months and also awarded compensation of Rs.2,50,000/- and in default in payment of compensation sentenced the petitioner/accused to undergo simple imprisonment for a period of one month. As against the said judgement of conviction and sentence, the present Criminal Revision Case has been filed, along with above Crl.MPs, seeking the relief as stated above.
- 4.This court heard the learned counsel on either side and also perused the materials placed on record.
- 5.The learned counsel for the Petitioner/accused would submit that there are arguable points available in the Criminal Revision Case 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 may be suspended. He would further submit that the Petitioner is prepared to pay 50% of the cheque amount without prejudice to the rights of the Petitioner before the Trial Court.

6. Considering the facts and circumstances of the case and also considering the submission of the learned counsel for the Petitioner/ accused that there are arguable points involved in the revision petition and further, the revision petition are not likely to be taken up for final hearing in the near future, this Court is of the view that the Petitioner/ accused herein is entitled to the relief of suspension of sentence. Accordingly, the substantive sentence of imprisonment imposed on the Petitioner / accused in this case alone is hereby suspended, till the disposal of the Criminal Revision Case and the relief 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 namely Rs.1,25,000/- (Rupees One Lakh and 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 Judicial Magistrate, (Fast Track Court No.1) Erode in S.T.C.No.281/2016, dated 06.10.2017.
- b) The Petitioner/ accused and the sureties shall affix his photograph and Left Thumb Impression in the surety bond and the Magistrate may obtain a copy of his Aadhaar card or Bank pass Book to ensure his identity.
- 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 petitions 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.

-sd/-
05/09/2019

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 1ST ADDITIONAL DISTRICT
AND SESSIONS JUDGE, ERODE.

2 THE JUDICIAL MAGISTRATE,
FAST TRACK COURT NO.I, ERODE.

3 THE CHIEF JUDICIAL MAGISTRATE
ERODE [FOR INFORMATION]

+1C.C. to M/S. C.S.SARAVANAN Advocate on payment of necessary charges SR NO.18725

Order

in
CRL MP.12745 & 12746 OF 2019
in
CRL RC.868 OF 2019

Date :05/09/2019

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MK:18/09/2019