

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.12799 of 2019
IN CRL.RC.NO.872 OF 2019

VINCENT SURESH BABU

[PETITIONER]

vs

1 THE STATE BY
PUBLIC PROSECUTOR,
COIMBATORE.

[RESPONDENTS]

2 RAFI AHAMED

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.872/2019 on the file of the High Court, the High Court will be pleased to suspend the conviction and sentence passed in C.A.No.175 of 2018 on the file of I Addl.district and Sessions Judge, Coimbatore on 15.07.2019 and confirm the order in CC.No.254 of 2017 passed by the Judicial Magistrate FTC-II, Coimbatore dated 13.04.2018 until the disposal of Criminal Revision,enable the petitioner toobtain the order.[CRL.MP.NO.12799/2019

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.872/2019 on the file of the High Court and upon hearing the arguments of M/S.N.BAASKARAN Advocate for the petitioner and of MR.M.MOHAMED RIYAZ,ADDL.PUBLIC PROSECUTOR FOR[R-1] on behalf of the Respondent the court made the following order:-

1.Crl.MP.No.12799 of 2019 has been filed to suspend the sentence, imposed on the Petitioner/ accused, by the Appellate Court and judgement dated 15.07.2019 made in Crl.A.No.175 of 2018 on the file of the learned Principal District and Sessions Judge, Coimbatore, confirming the judgement, dated 13.04.2018 made in CC.No.254/2017 passed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level-II, Coimbatore, pending disposal of the above Criminal Revision Case.

2. The facts, in a nutshell, are that the Petitioner / accused, doing construction business, induced the defacto complainant to invest a sum of Rs.50 lakhs in the construction business and after negotiation, the complainant decided to invest Rs.25 Lakhs under a Memorandum of Compromise. However, the accused had neither started

the construction nor repaid the amount. The post dated cheque dated 08.08.2011 bearing No.434473, drawn on Indian Overseas Bank, Race Course Branch, issued for the repayment of the amount came to be dishonoured on the ground of insufficient funds and the defacto complainant had issued a legal notice on 10.10.2011 and the same was received by the petitioner/accused on 11.10.2011. Since the accused did not comply with the demand within a period of 15 days the complainant has preferred a complaint under section 138 r/w 141 of the Negotiable Instrument Act and the learned Judicial Magistrate Court Fast Track Court at Magisterial level No.II, Coimbatore, has convicted the appellant under section 138 r/w 141 of the Negotiable Instruments Act in C.C.No.254/2017 on 13.04.2018. The petitioner/accused was convicted u/s.138 of NI Act and was sentenced to undergo simple imprisonment for a period of one year and also to pay the cheque amount of Rs.25,00,000/- as compensation along with interest at the rate of 6 % per annum from the date of cheque till date of payment of the complainant within one month and in default in payment of compensation sentenced the petitioner/accused to undergo simple imprisonment for a period of three months. Further, his sentence was suspended on the same day till 12.05.2018 in CMP.No.4527/2018. As against the said judgement of conviction and sentence, the appellant has filed an appeal in Crl.A.175/2018, wherein the Lower Appellate Court had confirmed the conviction and sentence passed by the Trial Court. As against which, the present Criminal Revision Case has been filed, along with above Crl.MP, seeking the relief 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 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 deposit 50% of the cheque amount without prejudice to the rights of the Petitioner before the Trial Court, pending revision.
5. 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 bail is granted on the following conditions :-

a) The Petitioner/ accused shall deposit 50% of the cheque amount namely Rs.12,50,000/- (Rupees Twelve Lakhs and Fifty thousand only), before the Trial Court **IN TWO EQUAL**

INSTALMENTS. The first instalment, VIZ., Rs.6,25,000/- [Rupees Six Lakhs Twenty Five Thousand only] shall be paid , within a period of four weeks from the date of receipt of a copy of this order and the balance amount of Rs.6,25,000/- [Rupees Six Lakhs Twenty Five Thousand only] shall be paid within a period of four weeks from the date of payment of the first instalment amount. 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.II, Magisterial Level), Coimbatore, in CC.No.24/2017 dated 13.04.2018.

- 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.

6. Post on 06.11.2019 for reporting compliance.

-sd/-
06/09/2019
WEB COPY

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 DISTRICT AND
SESSIONS JUDGE, COIMBATORE

2 THE JUDICIAL MAGISTRATE,
[FAST TRACK COURT NO.II,) MAGISTERIAL LEVEL
COIMBATORE

3 THE CHIEF JUDICIAL MAGISTRATE
COIMBATORE [FOR INFORMATION]

4 THE STATE BY
PUBLIC PROSECUTOR, COIMBATORE.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 C.C. to M/S.N.BAASKARAN Advocate on payment of necessary
charges SR.NO. 18752

Order

in
CRL MP.12799/2019

IN CRL.RC.NO.872 OF 2019

Date :06/09/2019

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

सत्यमेव जयते

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