

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 No.12860 of 2019

IN CRL.RC.No.885 OF 2019

S.SURESH

[PETITIONER]

Vs

R.PALANI

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.885/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence of 12 months simple imprisonment imposed by the learned Judicial Magistrate, FTC, Magisterial Level at Poonamallee, in STC No.296/2015 dated 18.12.2017 and confirmed by the III Additional District and Sessions Judge, Thiruvallur District at Poonamallee in C.A.99 of 2018 dated 29/07/2019 pending disposal of the above Crl.RC.No.885 of 2019.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.885/2019 on the file of the High Court and upon hearing the arguments of M/S.M.PRABHAKAR, Advocate for the petitioner the court made the following order:-

1. This Criminal Miscellaneous Petition has been filed to suspend the sentence of imprisonment, imposed on the Petitioner in STC.No.296/2015, by the learned judicial Magistrate, FTC, Magisterial Level No.II at Poonamallee, by judgement, dated 18.12.2017, confirming the judgement, dated 29.07.2019 passed in CA.No.99/2018 by the III Additional District and Sessions Judge Thiruvallur District at Poonamallee and to enlarge the Petitioner on bail, pending disposal of the above 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.20,00,000/- for his family expenses from the complainant on 05.06.2014 under a promissory note dated 05.06.2014, agreeing to repay the said sum with interest at 2% per month. The accused has paid interest only for one month and thereafter, he has failed to pay any amount towards either principal or interest and later when the complainant had demanded the accused to repay the loan amount and interest, negotiation was

arrived at and the accused agreed to pay an amount of Rs.23,00,000/- towards principal and interest and issued a cheque bearing number 088254 for a sum of Rs.23,00,000/-, dated 5/6/2015, drawn on HDFC Bank Limited and when the said cheque was presented on 05.06.2015 for encashment, it was returned unpaid on the ground of insufficient funds and hence, a legal notice dated 19.06.2015 was issued by the complainant through registered post, calling upon the accused to pay the cheque amount within 15 days from the date of receipt of the legal notice, but the accused on receipt of the legal notice has issued a reply notice, dated 22.10.2015, with frivolous allegations to defraud the complainant. Hence, the complainant had filed a private complaint for the offence under Section 138 of the Negotiable Instruments Act, before the Judicial Magistrate, Fast Track Court (Magisterial Level No.II) Poonamallee, in STC.No.482/2015, wherein the Petitioner was found guilty for the offence under Section 138 of the Negotiable Instruments Act and he was convicted and sentenced to undergo 12 months Simple Imprisonment and to pay a compensation of Rs.23,00,000/-, in default to pay the compensation, to undergo simple imprisonment for 3 weeks. As against the said judgement of conviction and sentence, the Petitioner/accused had preferred an appeal in CA.No.99/2018, before the Additional District and Sessions Judge, Poonamallee, and the said appeal was dismissed, by the impugned judgement. Hence, the above Criminal Revision Case has been filed, along with the above Criminal Miscellaneous Petition, 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. He would further submit that without prejudice to his rights the petitioner is prepared to deposit Rs.10lakhs before the trial Court, pending disposal of the revision and thereby would pray that the substantive sentence imposed against the Petitioner/accused may be suspended.

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 sentences of imprisonment alone can be suspended on certain conditions. Accordingly, the substantive sentence of imprisonment imposed on the Petitioner/accused alone is hereby suspended, till the disposal of the Criminal Revision Cases and the Petitioner/accused is hereby ordered to be enlarged on bail on the following conditions:-

- a) The Petitioner/accused shall deposit Rs.10,00,000/- (Rupees Ten Lakhs 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 learned judicial Magistrate, FTC, Magisterial Level II at 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 10.30a.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.

6 Post the matter on 14.10.2019 for reporting compliance.

-sd/-

09/09/2019

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.

सत्यमेव जयते

TO

1 JUDICIAL MAGISTRATE, FTC,
MAGISTERIAL LEVEL NO.II, AT POONAMALLEE

2 THE CHIEF JUDICIAL MAGISTRATE
THIRUVALLUR (FOR INFORMATION)

WEB COPY

3 III ADDITIONAL DISTRICT AND
SESSIONS JUDGE, THIRUVALLUR DISTRICT AT
POONAMALLEE

C.C. to M/S.M.PRABHAKAR Advocate on payment of necessary
charges SR.NO.18783

Order

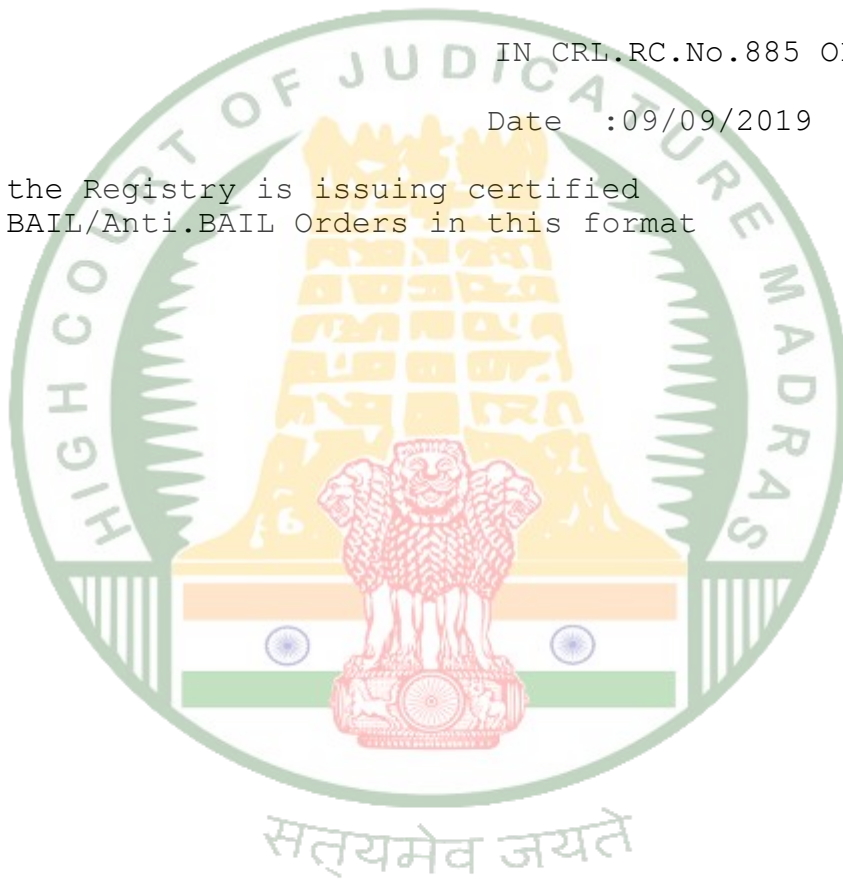
in
CRL MP.12860/2019

IN CRL.RC.No.885 OF 2019

Date :09/09/2019

From 7.2.2001 the Registry is issuing certified
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RVR 16/09/2019



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