

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Tenth day of September Two Thousand Nineteen

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION No.12912 & 12916 of 2019

IN CRL.RC.NO.891 OF 2019

P.VEMBANAN

[PETITIONER]

vs

C, THIRUPATHI

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.891/2019 on the file of the High Court, the High Court will be pleased to

[I] suspend the sentence of imprisonment imposed in the Judgement dated 12.07.2019 made in C.A.No.337/2018 on the file of the IInd Addl.District Sessions Court, Erode District at Erode, confirming the conviction imposed in Judgement dated 08.10.2018 made in S.T.C.No.167 of 2014 on the file of the learned Judicial Magistrate(Fast Track Court No.I), Erode and enlarge the petitioner on bail pending disposal of the above revision petition. [CRL.MP.NO.12912/2019]

[II] grant an order of exemption from surrendering before the trial court in pursuance to the Judgment dated 12.07.2019 made in C.A.No.337/2018 on the file of the II Addl. District Sessions Court, Erode District at Erode, confirming the conviction imposed in Judgment dated 08.10.2018 made in S.T.C.No.167 of 2014 on the file of the learned Judicial Magistrate(Fast Track Court No.I) Erode pending disposal of the above Revision Petition. [CRL.MP.NO.12916/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.891/2019 on the file of the High Court and upon hearing the arguments of M/S.M.GURUPRASAD 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 Crl.A.No.337 of 2018, by the II Additional District Sessions Court, Erode, by judgement, dated 12.07.2019, confirming the conviction imposed in Judgment dated 08.10.2018 and to enlarge the Petitioner/Accused on bail, pending disposal of the above Criminal Revision Case.

2.Crl.MP.No. 12916 of 2019 has been filed for exempting the

- Petitioner from his surrender, pursuant to the judgement of conviction and sentence, passed by the learned Additional District and Sessions Judge, Erode district at Erode by judgement dated 12.07.2019. 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, it is the complainant's case that on 19.10.2013 the petitioner herein had borrowed a sum of Rs.5,36,000/- from the respondent as a hand loan, promising to repay the same in 6 instalments and to discharge the said liability, on 19.10.2013 the petitioner had issued 6 post dated cheques drawn on ICICI Bank, Erode Branch, each for a sum of Rs. 89,400/-, Rs.89,200/-, Rs.89,100/-, Rs.89,500/-, Rs.89,900 and Rs.89,300/- bearing Nos.362301 to 362306 respectively dated 26.10.2013, 02.11.2013, 09.11.2013, 16.11.2013, 23.11.2013 and 30.11.2013 respectively totalling a sum of Rs.5,36,400/-. When the said cheques were presented on 30.11.2013 through the KarurVysya Bank, Erode Branch, for encashment, they were returned unpaid on the ground of insufficient funds, on 03.12.2013. Hence, a legal notice dated 30.12.2013 was issued by the complainant. The notice was received by the petitioner on 31.12.2013 and even after receipt of the same the petitioner neither paid the amount nor sent a reply to the statutory notice issued u/s.138 (b) of the NI Act. Hence, the complainant had filed a complaint for the offence under Section 138 of the Negotiable Instruments Act, before the Judicial Magistrate, FTC No.I, Erode, in STC.No.167 of 2014, wherein the Petitioner/Accused was found guilty for the offence under Section 138 of the Negotiable Instruments Act and convicted and sentenced him to undergo one year Simple Imprisonment and to pay a sum of Rs.5,36,000/- (Rupees Five lakhs and thirty six thousand Only) towards compensation under Section 357(3) of Cr.PC, in default, to undergo two months Simple Imprisonment. As against the said judgement of conviction and sentence, the Petitioner/Accused had preferred an appeal in CA.No.337 of 2018, before the II Additional District Sessions Court, Erode District at 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.
 - 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 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 50% of the cheque amounts (in all Rs.5,36,400/-), namely, Rs.2,68,200/- (Rupees Two Lakhs sixty eight thousand and two hundred 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, (Fast Track Court No-1), 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 14.10.2019 for reporting compliance.

-sd/-

10/09/2019

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 II ADDITIONAL DISTRICT
SESSIONS COURT, ERODE

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

3 THE CHIEF JUDICIAL MAGISTRATE
ERODE[FOR INFORMATION]

+1 C.C. to M/S.M.GURUPRASAD Advocate on payment of necessary
charges SR.NO. 18962

Order

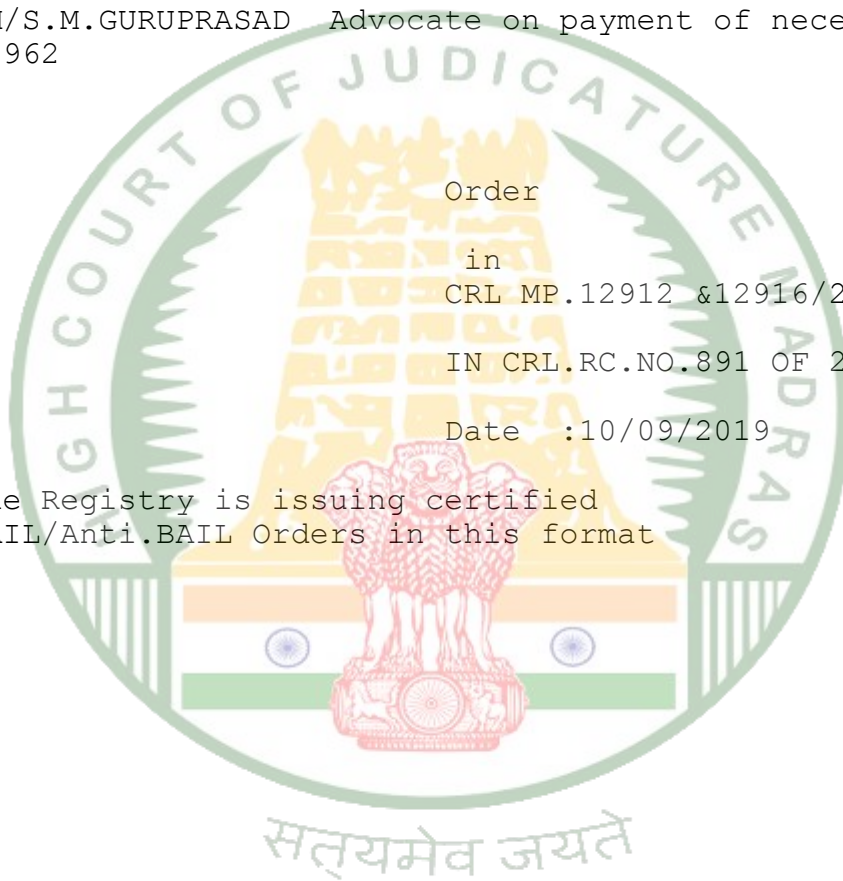
in

CRL MP.12912 &12916/2019

IN CRL.RC.NO.891 OF 2019

Date :10/09/2019

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



WEB COPY