

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 Nos.12986 & 12990 of 2019

IN

CRL.RC.NO.901 OF 2019

D.VINOTH KUMAR

[PETITIONER / APPELLANT]

Vs

B.KRISHNAN

[RESPONDENT / RESPONDENT]

Petitions praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.901 of 2019 on the file of the High Court, the High Court will be pleased to

[i] suspend the sentence of imprisonment imposed in the judgment dated 21.11.2018 made in S.T.C.No.670 of 2016 on the file of the District Munsif Cum Judicial Magistrate Kodumudi which was confirmed in the judgment dated 20.07.2019 made in C.A.No.386/2018 on the file of the II Additional District and Sessions Judge, Erode and enlarge the petitioner on bail pending disposal of the above Crl.RC.No.901/2019. [CRL.MP.NO.12986/2019]

[ii] grant an order of exemption from surrendering before the trial Court in pursuance of the judgment dated 20.07.2019 made in C.A.No.386 of 2018 on the file of the II Additional District and Sessions Judge, Erode confirming the conviction imposed in the judgment dated 12.11.2018 made in S.T.C.No.670 of 2016 on the file of the District Munsif Cum Judicial Magistrate Kodumudi, pending disposal of the above Crl.RC.No.901/2019. [CRL.MP.NO.12990/2019]

Order : These petitions coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.901/2019 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 by the petitioner/A-1 to suspend the sentences, imposed on the Petitioner in Crl.A.No.386/2018, by the learned II Additional District and Sessions Judge, Erode, by judgement, dated 20.07.2019, confirming the judgment dated 12.11.2018 made in STC.No.670/2016 by the learned District Munsif Cum Judicial Magistrate Kodumudi, and to enlarge the

Petitioner on bail, pending disposal of the above Criminal Revision Case.

2.Crl.MP.No12990/2019 has been filed for exempting the Petitioner/A-1 from his surrender, pursuant to the Judgement of conviction and sentence, passed by the learned II Additional District and Sessions Judge, Erode, by judgement, dated 20.07.2019, 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 the Petitioner/ A-1 along with his wife had borrowed a sum of Rs.5,00,000/- from the Respondent/ complainant for their urgent expenses and that on demand, they had issued a post dated cheque bearing No.580792 drawn on ICICI Bank, Coonoor Branch dated 28.06.2016. When the said cheques was presented on 28.06.2016 for encashment, they were returned unpaid on the ground of insufficient funds and "Drawer's signature incomplete/differs/required". Hence, a legal notice dated 29.06.2016 was issued by the complainant and though the petitioner/A-1 received the notice on 30.06.2016 and sent a reply on 15.07.2016, the second accused evaded to receive the notice. Hence, the complainant had filed a private complaint for the offences under Sections 138 of the Negotiable Instruments Act, before the District Munsif cum Judicial Magistrate, Kodumudi, in STC.No.670/2016, wherein, the trial Court acquitted A2/Wife of the petitioner herein, and however, the Petitioner/A-1 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. As against the said judgement of conviction and sentence, the Petitioner/ A-1 had preferred an appeal in CA.No.386/2018, before the II Additional District and Sessions Judge, 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/A-1 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 Petitioners have got a fair chance of succeeding in the Criminal Revision Case and would pray that the substantive sentence imposed against the Petitioner/A-1 may be suspended. He would further submit that the Petitioner is prepared to deposit a sum of Rs.2,00,000/- without prejudice to his rights pending revision.

6.Considering the facts and circumstances of the case and also considering the submission of the learned counsel for the Petitioner/ A-1 that there are arguable points involved in the revision petition and further, the revision petition is not likely to be taken up for final hearing in the near future, this Court is of the view that the Petitioner/ A-1 herein is entitled to the relief of suspension of sentence. Accordingly, the substantive sentence of imprisonment imposed on the Petitioner / A-1 alone is

hereby suspended, till the disposal of the Criminal Revision Case and the reliefs of exemption from surrender before the Court, suspension of sentence and bail are granted on the following conditions :-

- a) The Petitioner/ A-1 shall deposit a sum of Rs.2,00,000/- (Rupees two 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/ A-1 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 District Munsif cum Judicial Magistrate, Kodumudi.
- b) The Petitioner/A-1 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/ A-1 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/A-1, depositing the said amount, it is open to the Trial Court to commit the Petitioner/ A-1 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 THE DISTRICT MUNSIF CUM
JUDICIAL MAGISTRATE, KODUMUDI

2 THE CHIEF JUDICIAL MAGISTRATE
ERODE DISTRICT [FOR INFORMATION]

3 II ADDITIONAL DISTRICT AND
SESSIONS JUDGE, ERODE

C.C. to M/S. M.GURUPRASAD Advocate on payment of necessary
charges SR.No.18961

Order

in

CRL MP.Nos.12986 & 12990/2019

in

CRL.RC.901/2019

Date :10/09/2019

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

cs 16/09/2019



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