

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twelfth day of September Two Thousand Nineteen

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION No.13091 of 2019

in CRL.R.C.NO.909 OF 2019

K.ABDUL KADAR

[PETITIONER]

Vs

G.K.SAMPATH KUMAR

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.909 OF 2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner herein by the XVII Additional City Civil Court in C.A.No.618 of 2018 dated 05.07.2019 by confirming the Judgment passed in C.C.No.2864 of 2013 dated 16.05.2018 on the file of Metropolitan Magistrate, Fast Track Court II, at Egmore, pending disposal of the above Crl.R.C.NO.909/2019.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.909 OF 2019 on the file of the High Court and upon hearing the arguments of M/S.T.ANNAAMALAI, 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 CA.NO.618/2018, by the XVII Additional City Civil Court, Chennai by judgement, dated 05.07.2019, confirming the conviction imposed in Judgment dated 16.05.2018 in C.C.No.2864/2013, on the file of the learned Metropolitan Magistrate, FTC II, Egmore and to enlarge the Petitioner/Accused 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 complainant and the accused were friends for more than 15 years and on such acquaintance during the 2nd week of February 2012, the petitioner/accused herein had borrowed a sum of Rs.5,00,000/- from the respondent in order to meet out his daughter's marriage the complainant had arranged the above sum by obtaining loans from his friends circle and relatives and given the same to the accused in front of one Mr.V.J.Loganathan on 05.03.2012, promising to repay the same within a six months time and to discharge the said liability on 13.03.2013 the petitioner had issued a cheque drawn

on Indian Bank, Pudupet Branch, for a sum of Rs. 5,00,000/- bearing No.862613. When the said cheques were presented on the same day through Bank, for encashment, that was returned; unpaid on the ground of insufficient funds. Hence, a legal notice dated 28.03.2013 was issued by the complainant through RPAD and it was returned as un-served with postal endorsement asw unclaimed. Hence, the complainant had filed a complaint for the offence under Section 138 of the Negotiable Instruments Act, before the learned Metropolitan Magistrate, FTC No.II, Egmore (Allikulam), Chennai in CC.NO.2864/2013, 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.10,00,000/- (Rupees Ten lakhs Only) towards compensation. As against the said judgement of conviction and sentence, the Petitioner/Accused had preferred an appeal in CA.No.618 of 2018, before the XVII Additional City Civil Court, Chennai and the said appeal was dismissed, by the impugned judgement. Hence, the above Criminal Revision Case has been filed, 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 and would pray that the substantive sentence imposed against the Petitioner/Accused may be suspended. He would further submit that though the trial Court has imposed a compensation of Rs. 10,00,000/-, the cheque was issued for only Rs.5,00,000/-. He would further submit that without prejudice his contention the petitioner is prepared to deposit Rs.3,00,000/- , pending revision.

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.3,00,000/- (Rupees three Lakh 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 Metropolitan Magistrate, FTC-II, Egmore (Allikulam), Chennai.

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.

6. Post the matter on 16.10.2019 for reporting compliance.

-sd/-

12/09/2019

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 METROPOLITAN MAGISTRATE,
FAST TRACK COURT II, EGMORE, CHENNAI.

2 THE CHIEF METROPOLITAN
MAGISTRATE, EGMORE, CHENNAI (FOR INFORMATION)

3 XVII ADDITIONAL CITY CIVIL COURT, CHENNAI

C.C. to M/S.T.ANNAAMALAI Advocate on payment of necessary charges SR.NO.18985

Order
in
CRL MP.13091/2019

in CRL.R.C.NO.909 OF 2019

Date :12/09/2019

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RVR 17/09/2019

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