

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Thirteenth day of September Two Thousand Nineteen

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION No.13209 & 13213 of 2019

IN CRL.R.C.NO.921 of 2019

V.RAJESWARI

[PETITIONER]

Vs

K.RAYAPPAN

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(i) To suspend the sentence of imprisonment imposed in the judgment dated 28.04.2017 delivered in C.C.No.161/2017 on the file of the learned Judicial Magistrate Fast Track Court No.I (Magisterial Level), Coimbatore which was confirmed in the judgement dated 19.08.2019 in C.A.NO.110 of 2017 on the file of the learned V Additional District and Sessions Judge, Coimbatore and enlarge the petitioner on bail Pending disposal of the above Crl.R.C.NO.921 of 2019. (Crl.M.P.No.13209/2019)

(ii) To grant an order of exemption to the petitioner from surrendering before the trial court in pursuance of the judgement dated 19.08.2019 delivered in C.A.No.110 of 2017 on the file of the learned V Additional District and Sessions Judge, Coimbatore, confirming the conviction an sentence of imprisonment imposed in the judgment dated 28.04.2017 delivered in C.C.No.161/2017 on the file of the learned Judicial Magistrate Fast Track Court No.I (Magisterial Level), Coimbatore, Pending disposal of the above Crl.R.C.NO.921 of 2019. (Crl.M.P.No.13213/2019)

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S. SOMASUNDAAR N., Advocate for the petitioner, the court made the following order:-

1. These Criminal Miscellaneous Petitions have been filed by the Petitioner/Accused to suspend the sentence of imprisonment, imposed by the judgment, dated 28.04.2019 made in C.C.No.161/2017, by the learned Judicial Magistrate Fast Track Court No.1 (Magisterial Level), Coimbatore, confirming the judgment, dated 19.08.2019 passed in C.A.No.110 of 2017, by the learned V Additional District and Sessions Judge, Coimbatore and to exempt the Petitioner from surrendering before the Trial Court, in connection with the conviction and sentence, imposed in C.A.No.110 of 2017, by the learned V Additional District and Sessions Judge, Coimbatore by judgement, dated 19.08.2019, respectively, pending disposal of the 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 hand loan of a sum of Rs.7,00,000/- without interest and without security from the respondent/complainant for her business needs on 28.12.2013, agreeing to repay the same within six months. In order to discharge the said loan, the petitioner/accused had issued a cheque, dated 15.08.2014, bearing No.301179, for a sum of Rs.7,00,000/- for collection on 17.09.2014, the said cheque was dishonoured on 18.09.2014, on the ground of insufficient funds. Hence, the complainant had issued a legal notice on 30.09.2014 and on 23.10.2014, the petitioner/accused had sent a reply notice with false averments. Hence, the complainant had preferred a private complaint for the offence under Section 138 of the Negotiable Instruments Act, before the Judicial Magistrate, FTC, Magisterial Level I, Coimbatore, in CC.No.161 of 2017, wherein the Petitioner/accused, was found guilty for the offence under Section 138 of the Negotiable Instruments Act and convicted and sentenced to undergo six months Simple Imprisonment and to pay a sum of Rs.7,00,000/- (Rupees Seven Lakhs Only) as compensation to the complainant within two months, 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.110 of 2017, before the learned V Additional District and Sessions Judge, Coimbatore and the said appeal was dismissed, by the impugned judgement. Hence, the above Criminal Revision Case has been filed, along with above CrI.MPs, 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 and that the Petitioner may be exempted from surrendering before the Trial Court. He would further submit that without prejudice to his contention the petitioner is prepared to deposit 50% of the cheque amount.
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 sentence of

imprisonment alone can be suspended on certain conditions. Accordingly, till the disposal of the Criminal Revision Case, the reliefs of exemption from surrender before the Court, suspension of sentence and bail are granted on the following conditions :-

6. The Petitioner/Accused shall deposit 50% of the cheque amount (Rs.7,00,000/-), namely, Rs.3,50,000/- (Rupees Three Lakhs Fifty Thousand 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 nationalized 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), Magisterial Level I, Coimbatore.
- a) 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.
- b) 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.
- c) On the failure of the Petitioner/Accused, depositing the said amount, it is open to the Trial Court to commit the Petitioner/ A2 into custody for undergoing the sentence.

7. Post the matter on 11.10.2019 for reporting compliance.

-sd/-

13/09/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

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TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE JUDICIAL MAGISTRATE,
FAST TRACK COURT NO.I, (MAGISTERIAL LEVEL),
COIMBATORE.

2 THE CHIEF JUDICIAL MAGISTRATE
COIMBATORE. [FOR INFORMATION]

3 THE V ADDITIONAL DISTRICT
AND SESSIONS JUDGE, COIMBATORE.

+1 C.C. to M/S. SOMASUNDAAR N. Advocate on payment of necessary
charges SR.NO.19252

Order

in

CRL MP.13209 & 13213/2019

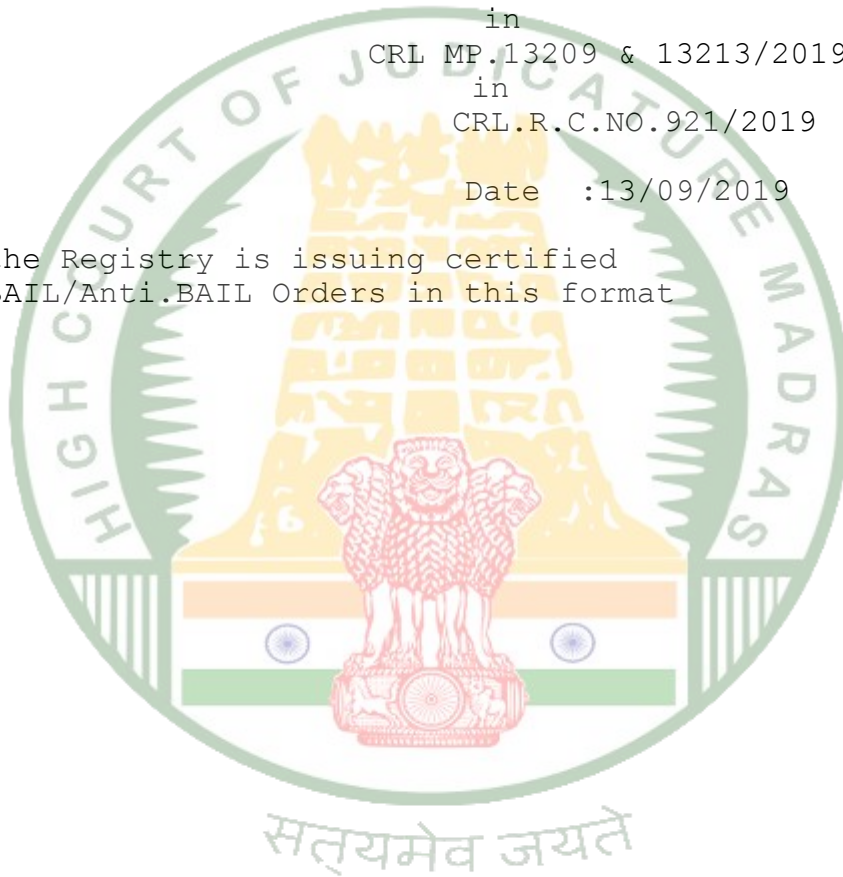
in

CRL.R.C.NO.921/2019

Date :13/09/2019

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TA-19/09/2019



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