

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Third day of September Two Thousand Nineteen

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION No.13666 of 2019

IN CRL.R.C.NO.968 OF 2019

D.LOGANATHAN

[PETITIONER]

Vs

V.KANDASAMY

[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 in the judgment passed by the Learned VII Additional Sessions Judge at Chennai, convicted the Petitioner / Respondent / Accused in Crl.A.No.169 of 2018 dated 30.08.2019 and confirmed the Judgment passed by the Learned Fast Track-II Metropolitan Magistrate, Egmore, Allikulam, Chennai, acquittal the Petitioner/Respondent/Accused in C.C.No.3063 of 2015 dated 08.03.2018.

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. R.MUTHUKUMAR, Advocate for the petitioner, and of M/S.M.SRIDHAR, Advocate, on behalf of the Respondents the court made the following order:-

- 1.This Criminal Miscellaneous Petition has been filed by the Petitioner/Accused, seeking suspension of sentence of imprisonment, imposed by the judgment, dated, 30.08.2019, made in Crl.A.No.169/2018, by the learned VII Additional Sessions Judge, Chennai, setting aside the judgment of acquittal dated 08.03.2018, made in C.C.No.3063/2015, by the Metropolitan Magistrate, Fast Track No.II, Egmore, Allikulam, Chennai, 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.By the judgement, in C.C.No.3063/2015, dated 08.03.2018, the Trial Court had acquitted the Petitioner/ accused. The Appellate Court in Crl.A.No.169/2018, by judgment dated 30.08.2019 had set aside the

judgment of acquittal of the Trial Court and convicted and sentenced the petitioner/accused for the offence under Sections 138 of the Negotiable Instrument Act to undergo six months Simple Imprisonment and to pay a compensation of Rs.2,50,000/-.

4. According to the learned counsel for the Petitioner/accused, the petitioner/accused had examined herself as witnesses before the Trial Court and had rebutted the presumption by proving that Ex.P1 was issued as security during the year 2008 and the Trial Court finding that the petitioner had rebutted the presumption by preponderance of probability had acquitted the petitioner/accused. Whereas, the Appellate court on wrong appreciation of facts and Law had reverse the finding of the Trial Court and convicted the appellant. However, the learned counsel for the petitioner would submit that without prejudice to his contentions, the petitioner/accused is prepared to deposit 20% of the cheque amount before the Trial Court, within a period of two weeks from today. He would further submit that there are arguable points available in the Criminal Revision Case, which is not likely to be taken for final hearing in the near future and the Petitioner/accused has got a fair chance of succeeding in the Criminal Revision Case and hence, the substantive sentence imposed against the Petitioner/Accused may be suspended.

5. The learned counsel for the respondent/complainant would submit that the accused had not rebutted the presumption in accordance with law.

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

a) The Petitioner/Accused shall deposit a sum of Rs.50,000/- (Rupees Fifty Thousand Only) before the Trial Court within a period of two weeks from today and on such deposit being made the Trial Court shall re-deposit the said amount in a fixed deposit account in any nationalized bank, so that the amount accrues interest. The disbursement of this amount shall be decided at the culmination of the Criminal Revision Case. 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, each for a like sum to the satisfaction of the learned Fast Track No.II, Metropolitan Magistrate, 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 their Aadhaar Cards or Bank Pass Books to ensure their 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.

Post the matter on 14.10.2019 for reporting compliance.

-sd/-
23/09/2019

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 VII ADDITIONAL SESSIONS
JUDGE AT CHENNAI.

2 THE FAST TRACK II
METROPOLITAN MAGISTRATE, EGMORE, ALLIKULAM,
CHENNAI.

3 THE CHIEF METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI. [FOR INFORMATION]

+1 C.C. to M/S. R.MUTHUKUMAR Advocate on payment of necessary
charges SR.NO.19800

Order

in

CRL MP.13666/2019

in

CRL.R.C.NO.968/2019

Date :23/09/2019

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TA-26/09/2019