

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Eleventh day of December Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice R. MAHADEVAN

CRIMINAL MISCELLANEOUS PETITION No.18397 & 18398 of 2019

IN CRL.RC.NO.1412 OF 2019

P.USHA RANI

[PETITIONER]

Vs

S.MOHAN

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.1412/2019 on the file of the High Court, the High Court will be pleased to

[I]suspend the sentence/conviction made in Judgement dated 31.01.2019 made in C.A.No.101 of 2017 on the file of the Honble Principal Sessions Judge, Tiruvallur, confirming the Judgement and conviction dated 06.07.2017 made in STC No.369 of 2016 on the file of the Judicial Magistrate,fast Track court, Magisterial Level, Ambattur, enlarge the petitioner on bail pending disposal of the above criminal revision Petition.[CRL.MP.NO.18397/2019]

[II]exempt the petitioner from surrendering before the Judicial Magistrate Fast Track Court No.1 @ Magistrate Level, coimbatore in pursuance to the Judgment dated 31.01.2019 made in C.A.NO.101 of 2017 on the file of the Principal Sessions judge,Thiruvallur, confirming the Judgement and conviction dated 06.07.2017 made in S.T.C.NO.369 of 2016 on the file of the Judicial Magistrate Fast Track Court, Magisterial level,Ambattur, pending disposal of the above criminal Revision petition.[CRL.MP.NO.18398/2019]

Order : Theses petitions coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.1412/2019 on the file of the High Court and upon hearing the arguments of M/S.B.R.SHAANKARALINGAM Advocate for the petitioner , the court made the following order:-

By judgment, dated 06.07.2017 passed by the learned Judicial Magistrate, Fast Track Court (Magisterial Level), Ambattur, in S.T.C.No.369/2016, the petitioner was convicted for the offence under Section 138 of the Negotiable Instruments Act and was sentenced to undergo simple imprisonment for a period of Five Months and further directed to pay compensation of Rs.6,00,000/- to the complainant within one month, failing which, she shall undergo simple imprisonment for a further period of one month. Challenging the said conviction and sentence, the petitioner preferred an appeal in

Crl.A.No.101 of 2017 before the learned Principal Sessions Judge, Tiruvallur, in which, the order of conviction and sentence imposed by the trial court was confirmed. Aggrieved over the same, the petitioner filed the present Criminal Revision Case. She also filed two Miscellaneous Petitions seeking suspension of sentence and exemption from surrendering before the trial Court, pending disposal of this Criminal Revision.

2. According to the learned counsel for the Petitioner, only at the instigation of the police authorities, the cheques had been handed over to the complainant. Further, according to the learned Counsel for the petitioner, there are copious materials on record to prove that there is no legally enforceable debt and the petitioner has rebutted the presumption contemplated under Section 139 of the Negotiable Instruments Act, but the question of legally enforceable debt has not been gone into by the trial court and hence being a lady, the petitioner is necessarily to be considered for granting suspension of sentence. The learned counsel also submitted that there are arguable points available in the Criminal Revision Case, which is not likely to be taken up for final hearing in the near future and hence, the substantive sentence imposed against the petitioner may be suspended and the petitioner may be exempted from surrendering before the Trial Court.

3. Heard the learned counsel for the petitioner and also perused the materials placed on record.

4. At this juncture, it is relevant to point out that the Supreme Court, in *Bihari Prasad Singh v. State of Bihar and another* [2000 SCC (Crl) 1380], was of the view that while seeking the relief of suspension of sentence, the accused need not necessarily be under confinement. In *Ibrahim v. State of Kerala* [1979 KLT 857], it was held that for grant of suspension of sentence, the accused need not surrender and undergo confinement and filing revision without surrendering and confinement is well within the powers contemplated under Section 397(1) Cr.P.C, as the said provision itself is very unequivocal and unambiguous.

5. In the light of the aforesaid legal propositions and considering the facts and circumstances of the case and also taking note of the submissions of the learned counsel for the petitioner, this Court is of the view that the substantive sentence of imprisonment alone can be suspended subject to certain conditions. Accordingly, till the disposal of the Criminal Revision Case, the reliefs of exemption from surrender before the Trial Court, suspension of sentence and bail are granted, on the following conditions:-

- a) The Petitioner/Accused is ordered to be released on bail, on her 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

- 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; and
- 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 case and if she is not able to appear before the Trial Court on any day, due to unavoidable circumstances, she 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 her absence, as directed by the Trial Court. Such an application shall not be entertained often.

Post the matter on 10.01.2020 for reporting compliance.

-sd/-

11/12/2019

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 JUDICIAL MAGISTRATE,
FAST TRACK COURT[MAGISTERIAL LEVEL]AMBATTUR

2 THE CHIEF JUDICIAL MAGISTRATE
THIRUVALLUR[FOR INFORMATION]

3 THE PRINCIPAL SESSSIONS JUDGE
TIRUVALLUR

+1 C.C. to M/S.B.S.SHANKARALINGAM Advocate on payment of
necessary charges SR.NO. 25551

WEB COPY

Order

in

CRL MP.18397 & 18398/2019

IN CRL.RC.NO.1412 OF 2019

Date :11/12/2019

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copies of the BAIL/Anti.BAIL Orders in this format

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RD 16/12/2019