

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Fourth day of October Two Thousand Nineteen

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION No.14246 & 14248 of 2019

IN CRL.R.C.NO.1035 of 2019

B.U.MUTHUSAMI

[PETITIONER]

Vs

M.K.M.DINESH

[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 passed in Crl.A.No.56 of 2018 on the file of the III Additional District and Session Court, Erode at Gobichettipalayam dated 03.09.2019 reversing the order of judgment in CC.No.276 of 2006 on the file of the Judicial Magistrate No.1 at Gobichettipalayam, dated 30.01.2015 and to enlarge the Petitioner on bail, pending disposal of the Crl.R.C.No.1035 of 2019. (CRL.M.P.NO.14246/2019)

(ii) To set aside the judgment passed in Crl.A.No.56 of 2018 on the file of the III Additional District and Session Court, Erode at Gobichettipalayam dated 03.09.2019 reversing the order of acquittal in the well consider judgment in CC.No.276 of 2006 on the file of the Judicial Magistrate No.1 at Gobichettipalayam, dated 30.01.2015 by allowing the present Crl.R.C.No.1035 of 2019. (CRL.M.P.NO.14248/2019)

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.MA.P.THANGAVEL, Advocate for the petitioners, the court made the following order:-

1.These Criminal Miscellaneous Petitions have been filed by the Petitioner/Accused, seeking suspension of sentence of imprisonment, imposed vide judgment, dated 03.09.2019, made in Crl.A.No.56/2018 by the learned III Additional District and Sessions Court, Erode at Gobichettipalayam, reversing the judgement of acquittal passed in C.C.No.276/2006 dated 30.01.2015 by the Judicial Magistrate-I at Gobichettiplaym and to exempt the Petitioner/ Accused, from surrendering before the Trial Court, in connection with the judgment

of conviction and sentence dated 03.09.2019, made in C.A.No.56/2018, by the III Additional District and Sessions Court, Erode at Gobichettipalayam, 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. In and by the impugned judgment of the trial Court, the appellant/accused was acquitted for the offence under Section 138 of the NI Act. In the appeal, by the impugned judgement of the Appellate Court, the judgment of the acquittal of the trial Court was set aside and the Petitioner/ accused was convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo one year Simple Imprisonment and to pay a sum of Rs.7,00,000/- as compensation of the cheque amount.
4. The learned counsel for the petitioner would submit that the petitioner is an Advocate and that the entire case of the complaint is a fabricated one due to dispute between the petitioner and his colleague who had used his son and his friend to file the false complaint. He would submit that the trial court taking into account that a detailed reply had been sent by the petitioner to the legal notice of the complainant denying the liability and also finding that the petitioner had by evidence had disproved the liability had acquitted the petitioner/accused. However, the Appellate court on wrong appreciation of facts on law had convicted the petitioner. He would further submit that the Hon'ble Apex court had held that it is enough that the accused disproves the case of the complaint by preponderance of probability, particularly in the case, the petitioner by letting in cogent evidence had proved that the cheque was misused. According to the learned counsel for the Petitioner/accused, there are arguable points available in the Criminal Revision, 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.
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 trial Court, the substantive sentence of imprisonment alone are suspended and the petitioner/accused is ordered to be enlarged on bail, on the following conditions:-
 - i. The petitioner/accused shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty five Thousand only), with two sureties, each for a like sum to the satisfaction of the III Additional District and Sessions Court, Erode at Gobichettipalayam.

The Petitioner/accused shall report before the Trial Court on the first working day of every English Calendar month at 10.30 a.m., until further orders.

-sd/-
04/10/2019

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 III ADDITIONAL DISTRICT AND SESSIONS
COURT, ERODE AT GOBICHETTIPALAYAM,

2 THE JUDICIAL MAGISTRATE-I
GOBICHETTIPLAYM

3 THE CHIEF JUDICIAL MAGISTRATE
ERODE. [FOR INFORMATION]

C.C. to M/S.MA.P.THANGAVEL Advocate on payment of necessary
charges

Order
in
CRL MP.14246 & 14248/2019
in
CRL.R.C.NO.1035/2019

Date :04/10/2019

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

TA-04/10/2019