

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Eighteenth day of October Two Thousand Nineteen

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION No.14822 & 14823 of 2019

IN CRL.R.C.NO.1095 of 2019

K.BALAJI

[PETITIONER]

Vs

E.VIJAYAKUMAR

[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 imposed on him 30.07.2019 made in C.A.No.30 of 2019 on the file of the II Additional District and Sessions Judge, Salem confirming the conviction and sentence dated 21.01.2019 in S.T.C.No.1299/2015 on the file of the Judicial Magistrate No.V, Salem pending disposal of the above Crl.R.C.No.1095 of 2019. (Crl.M.P.NO.14822/2019)

(ii) To grant exemption to the petitioner from the surrender by virtue of the Judgment order dated 30.07.2019 made in C.A.No.30 of 2019 on the file of the II Additional District and Sessions Judge, Salem confirming the conviction and sentence dated 21.01.2019 made in S.T.C.No.1299/2015 on the file of the Judicial Magistrate No.V, Salem pending disposal of the above Crl.R.C.No.1095 of 2019. (Crl.M.P.NO.14823/2019)

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.P.JAGADEESAN, Advocate for the petitioner, [IN BOTH THE PETITIONS] 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 by the judgment, dated 21.01.2019 passed in STC.No.1299 of 2015, by the Judicial Magistrate Court No.V, Salem, as confirmed in the judgment, dated 30.07.2019, made in Crl.A.No.30/2019, by the II Additional District and Sessions Judge, Salem and to exempt the Petitioner/ Accused, from surrendering before the Trial Court, in connection with the conviction and sentence, imposed by the

judgment, dated 21.01.2019, made in STC.No.1299 of 2015, by the Judicial Magistrate Court No.V, Salem, 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 both the impugned judgements, for non-payment of the cheque amount in question, viz. Rs.1,00,000/-, the Petitioner/accused was convicted and sentenced for the offence under Section 138 of the Negotiable Instruments Act, to undergo one year Simple Imprisonment and to pay a sum of Rs.1,00,000/- (Rupees One Lakh Only), as compensation to the Respondent/complainant within two months, in default, to undergo two weeks Simple Imprisonment.
- 4.The learned counsel for the petitioner would submit that the petitioner has deposited a sum of Rs.25,000/-, during the pendency of the appeal and he would submit that he is prepared to pay an further amount of Rs.25,000/- , which would make out to 50 % of the cheque amount in total before the trial Court. According to the learned counsel for the Petitioner/ accused, 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 and the Petitioner may be exempted from surrendering before the Trial Court.
- 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, suspension of sentence and bail are granted, on the following conditions :-
 - a) The Petitioner/Accused shall deposit Rs.25,000/- (Rupees Twenty five 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 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, one should be a blood relative, each for a like sum to the satisfaction of the Judicial Magistrate Court No.V, Salem.
 - 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.

- d) 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.

Post the matter on 15.11.2019 for reporting compliance.

-sd/-
18/10/2019

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 JUDICIAL MAGISTRATE COURT
NO.V, SALEM,

2 THE CHIEF JUDICIAL MAGISTRATE
SALEM. [FOR INFORMATION]

3 THE II ADDITIONAL DISTRICT AND SESSIONS
JUDGE, SALEM

+2 C.C. to M/S.P.JAGADEESAN Advocate on payment of necessary charges SR.NO.21468, 21469

Order

in

CRL MP.14822 & 14823/2019

in

CRL.R.C.NO.1095 of 2019

Date :18/10/2019

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TA-18/10/2019