

IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Criminal Jurisdiction )

Monday, the Twenty First day of October Two Thousand Nineteen

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION No.14907 & 14911 of 2019

IN CRL.R.C.NO.1100 of 2019

N.DUR AISAMY

[ PETITIONER  
IN BOTH THE PETITIONS]

Vs

V.BALASUBRAMANIAN

[ RESPONDENT ]  
IN BOTH THE PETITIONS]

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 imprisonment imposed on to the petitioner by the Appellate Court and judgment dated 16.08.2019 made in C.A.No.51 of 2019 (On the file of the Principal Sessions Judge, Erode) by set aside the acquittal and reversing the judgment dated 10.01.2019 made in S.T.C.No.129 of 2014 on the Judicial Magistrate, Fast Track No.II, Erode. (Crl.M.P.No.14907/2019)

(ii) To exempt the petitioner to surrender before the appellate Court, on the judgement dated 16.08.2019 made in C.A.No.51 of 2019 (On the file of the Principal Sessions Judge, Erode) by set aside the acquittal and reversing the judgment dated 10.01.2019 made in S.T.C.No.129 of 2014 on the Judicial Magistrate, Fast Track No.II, Erode. (Crl.M.P.No.14911/2019)

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. C.S.SARAVANAN, 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 vide judgment, dated 16.08.2019, made in Crl.A.No.51/2019, by the learned Principal Sessions Judge, Erode, by set aside the acquittal and reversing the judgment passed in S.T.C.No.129/2014, dated 10.01.2019, by the Judicial Magistrate, Fast Track Court No-II, Erode and to exempt the petitioner/accused, from surrendering before the Trial Court, 16.08.2019, made in C.A.No.51/2019, by the Principal Sessions Judge, Erode, respectively, pending disposal of

the Criminal Revision Case.

2. This court heard the learned counsel for the petitioner and also perused the materials placed on record.
3. In and by the impugned judgement of the Appellate Court, the petitioner/accused was convicted for the offence under Section 138 of the Negotiable Instruments Act, 1881 and sentenced to undergo one year simple imprisonment and to pay compensation of cheque amount of Rs.2,50,000/- in default to undergo two months simple imprisonment.
4. The learned counsel for the petitioner would submit that the Trial Court had acquitted the petitioner/accused however, the Appellate Court had erroneously on wrong appreciation of facts and law as set aside the order of acquittal and convicted the petitioner/accused. He would submit that though the cheque was issued on 24.12.2013 has been issued prior to the amendment to the Negotiable Instruments Act. 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 and without prejudice to his contention, the petitioner is ready and willing to deposit 25% of the cheque amount, namely Rs.2,50,000/- (Rupees Two lakhs Fifty Thousand only).
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 25% of the cheque amount (Rs.2,50,000/-), namely, Rs.62,500/- (Rupees Sixty Two Thousand Five Hundred 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 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, one should be a blood relative, each for a like sum to the satisfaction of the Judicial Magistrate, Fast Track Court No-II, Erode.
  - 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/accused into custody for undergoing the sentence.

Post the matter on 18.11.2019 for reporting compliance.

-sd/-  
21/10/2019

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 PRINCIPAL SESSIONS JUDGE,  
ERODE.

2 THE JUDICIAL MAGISTRATE,  
FAST TRACK COURT NO-II, ERODE.

3 THE CHIEF JUDICIAL MAGISTRATE  
ERODE. [FOR INFORMATION]

+1 C.C. to M/S. C.S.SARAVANAN Advocate on payment of necessary charges SR.NO.21582

Order

in

CRL MP.14907 & 14911/2019

in

CRL.R.C.NO.1100/2019

Date :21/10/2019

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TA-22/10/2019