

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Thirteenth day of November Two Thousand Nineteen

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION No.15589 of 2019

IN CRL.RC.No.1175 OF 2019

MUTHURAJ

[PETITIONER]

Vs

THE STATE

[RESPONDENT]

REP BY, THE INSPECTOR OF POLICE,
C.C.I.W NAMAKKAL,
(REF. CR.NO.01/2008)

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.1175/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence in C.C.No.145/2008 dated 11th July 2017 on the file of the learned the Judicial magistrate No. I Namakkal Confirmed in CrlA No.48/2017 dated 12/07/2019 on the file of the Principal Sessions Judge, Namakkal and enlarge the petitioner on bail pending disposal of the Crl.RC.No.1175 of 2019.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Criminal Revision Case No.1175/2019 on the file of the High Court and upon hearing the arguments of M/S. S.SHEIK ISMAIL, Advocate for the petitioner and of MR. M.MOHAMED RIYAZ, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent 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 judgement, dated 11.07.2017, made in CC.No.145 of 2008, by the Judicial Magistrate No.I, Namakkal, as confirmed in Crl.A.No. 48 of 2017, dated 12.07.2019, on the file of the Principal Sessions Judge, Namakkal, 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.The Petitioner/Accused was charge sheeted for the offence under Section 408 of IPC, alleging that on 25.06.2005, 28.06.2005 and 12.07.2005, the Petitioner/Accused, while functioning as the Assistant Secretary in the Avalnayakkanpatti Primary Agriculture Cooperative Bank (PACB), who was entrusted with the funds and properties of PACB and whose duty was to maintain true and proper

accounts of PACB, had committed criminal breach of trust in respect of a sum of Rs.6,000/-, viz. Rs.2000/- on 25.06.2005, Rs.2600/- on 28.6.2005 and Rs.1400/- on 12.07.2005. In and by the impugned judgement, the Petitioner/ accused was convicted and sentenced for the offence under Section 408 of IPC to undergo six months imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment.

4.The learned counsel for the petitioner would submit that the allegation against the Petitioner was that while the petitioner was working as the Assistant Secretary of the Primary Agricultural Cooperative Bank, he had misappropriated the amounts given by three persons on 25.06.2005, 28.06.2005 and 12.07.2005 and that based on the complainant given by the Assistant Registrar, a case was registered by the respondent for the offences under Sections 408 of IPC and that the Trial Court had found him guilty. He would submit that the Courts below have failed to take into consideration the enormous delay in the complaint being made and that witnesses have not specifically stated about the money being handed over to the Petitioner/Accused and that the Petitioner was not the Assistant Secretary of the Bank and that the Petitioner was never entrusted with the affairs of the Bank or he had any domain over the same and that the Special Officer or President of the Bank along with the Secretary are responsible and in charge for the day today affairs of the Bank and hence, the conclusion that the Petitioner/Accused being in charge and responsible of the day today affairs of the Bank is not proper. He would submit that the petitioner was arrested and he is in custody and 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 Additional Public Prosecutor for the Respondent has filed a counter, raising objections for suspending the sentence and would submit that the Petitioner/ accused, while working as an Assistant Secretary of the Primary Agricultural Cooperative Bank, had misappropriated the amounts given by the members and thereby committed criminal breach of trust and that both the courts below, finding that the Prosecution has proved the case beyond all reasonable doubts, had found the Petitioner/Accused guilty and convicted and sentenced him accordingly and thereby, he would seek for dismissal of this Criminal Miscellaneous Petition.

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:-

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 learned Judicial Magistrate No.I, Namakkal.

ii. 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/-

13/11/2019

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,
NO.I, NAMAKKAL

2 THE CHIEF JUDICIAL MAGISTRATE
NAMAKKAL (FOR INFORMATION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
C.C.I.W NAMAKKAL

5 THE PRINCIPAL SESSIONS JUDGE,
NAMAKKAL

C.C. to M/S.S.SHEIK ISMAIL Advocate on payment of necessary charges Sr.23304

Order

in

CRL MP.15589/2019

IN CRL.RC.No.1175 OF 2019

Date :13/11/2019

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RVR 13/11/2019