

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twentieth day of December Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice R. MAHADEVAN

Crl.M.P.Nos.16339, 16356, 16358, 16340,16359 & 16341 of 2019

in Crl.RC.Nos.1220 & 1222 of 2019

1 VIJAY MINING & INFRA CORPORATION PVT LTD, [PETITIONER
2 VIJAYASEKHAR REDDY, IN ALL THE PETITIONS]

Vs

M/S.MINETECH INTERNATIONAL [RESPONDENT]
NO.17, NORTH RAILWAY TERMINUS ROAD, IN ALL THE PETITIONS]
ROYAPURAM, CHENNAI,
REGD.PARTNERSHIP FIRM,
REP THROUGH POWER AGENT,
UDAYA KUMAR.

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 execution of the sentence passed in C.C.Nos.1862, 1861, /2016 by the Learned Metropolitan Magistrate Fast Track IV, George Town, Chennai which was confirmed by the learned XV Additional Sessions Judge, Chennai in C.A.Nos.478, 479/2018 by judgment dated 12.09.2019 till the disposal of main Crl.R.C.No.1220 & 1222 of 2019. (Crl.M.P.Nos.16339 & 16356/2019)

(ii) To suspend the execution of the compensation passed in C.C.No.1861 & 1862/2016 by the Learned Metropolitan Magistrate Fast Track IV, George Town, Chennai which was confirmed by the learned XV Additional Sessions Judge, Chennai in C.A.Nos.479 & 478/2018 by judgment dated 12.09.2019 till the disposal of main Crl.R.C.No.1222 & 1220 of 2019. (Crl.M.P.Nos.16358 & 16340/2019)

(iii) To Exempt from surrender in C.C.Nos.1861 & 1862/2016 by the Learned Metropolitan Magistrate Fast Track IV, George Town, Chennai which was confirmed by the learned XV Additional Sessions Judge, Chennai in C.A.Nos.479 & 478/2018 by judgment dated 12.09.2019. (Crl.M.P.Nos.16359 & 16341/2019)

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.M.GUNASEKARAN, Advocate for the petitioner, [IN BOTH THE PETITIONS] the court made the following order:-

By judgements, dated 16.08.2018 passed by the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, in C.C.Nos.1861 and 1862 of 2016, the petitioners / A-1 and A-3 were convicted for the offence under Section 138 of the Negotiable Instruments Act and Petitioner 2 and 3 / A-2 and A-3 were sentenced to undergo simple imprisonment for a period of ten months and further directed to pay compensation amounts of Rs.58,45,463/- and Rs.58,78,821/- to the complainant within one month, respectively, failing which, the petitioners 2 and 3 shall undergo simple imprisonment for a further period of two months.

2. Challenging the said conviction and sentences, the petitioners / appellants have preferred appeals in Crl.A.Nos.479 and 478 of 2018 before the learned XV Additional Sessions Court, Chennai, in which, the Appellate Court allowed the Appeals in so far as the third accused (Dushyant Reddy) is concerned and dismissed the Appeals and confirmed the judgements, conviction, sentences and compensation amounts in so far as Accused 1 and 2 are concerned.

3. Aggrieved over the same, the petitioners / A-1 and A-2 have filed the present Criminal Revision Cases. They have also filed three Miscellaneous Petitions seeking: i) suspension of sentence; ii) suspension of execution of the compensation amount; and iii) exemption from surrendering before the trial Court, pending disposal of these Criminal Revisions.

4. According to the learned counsel for the Petitioners / A-1 and A-2, there are copious materials on record to prove that there is no legally enforceable debt and the petitioners have rebutted the presumption contemplated under Section 139 of the Negotiable Instruments Act. He further submitted that there are arguable points available in the Criminal Revision Cases, which are not likely to be taken up for final hearing in the near future and hence the substantive sentence imposed against the petitioners may be suspended, apart from paying compensation amounts and surrendering before the Trial Court.

5. Heard the learned counsel for the petitioners / A-1 and A-2 and also perused the materials placed on record.

6. 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.

7. Further in the case of Neptune Inflatables Limited. v. Industrial Venture Capital Limited, reported in 2017 SCC Online Mad 19811, in similar circumstances, it has been held as follows:-

"5. I have considered the submissions made by the learned counsel. The petitioner is convicted for an offence under section 138 of N.I. Act and pending appeal, the Court below suspended the sentence of A2 and A3 and directed them to pay only 10% of the compensation ordered by the Court below. The Hon'ble Supreme Court in Dilip S.Dahanukar V. Kotak Mahindra Co.Ltd and another reported in (2007)6 SCC 528 has already dealt as follows:

72.We, therefore, are of the opinion:

(i)in a case of this nature, sub-section(2) of Section 357 of the Code of Criminal Procedure would be attracted even when the appellant was directed to pay compensation;

(ii)the appellate court, however, while suspending the sentence, was entitled to put the appellant on terms. However, no such term could be put as a condition precedent for entertaining the appeal which is a constitutional and statutory right;

(iii)the amount of compensation must be a reasonable sum;

(iv)the court, while fixing such amount, must have regard to all relevant factors including the one referred to in sub-section(5) of Section 357 of the Code of Criminal Procedure;

(v)no unreasonable amount of compensation can be directed to be paid.

6. As per the judgment of the Hon'ble Supreme Court, the Appellate Court is entitled to put the appellant on terms while suspending the sentence. However, the Hon'ble Supreme Court has said that the amount should be reasonable. The other judgment relied upon by the learned counsel shows that, while suspending the sentence, the Court cannot order deposit of amount as a condition....."

8. 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 petitioners, this Court is of the view that the substantive sentence of imprisonment alone can be suspended, apart from exemption from surrendering and paying compensation amount by the petitioners, subject to certain conditions. Accordingly, till the disposal of the Criminal Revision Case, the reliefs of execution of the compensation amount, exemption from surrender before the Trial Court, suspension of sentence and bail are granted, on the following conditions:-

- a) In each of the above petitions, the second petitioner / A-2 shall deposit 10% of the compensation amount(s) awarded by the Trial Court, on or before 10.01.2020;
- b) On such deposit being made, the Trial Court shall redeposit the said amount(s) in Fixed Deposit Account(s), in any one of the Nationalized Banks, renewable thereafter periodically. The disbursal of this amount(s) shall be decided at the culmination of the Criminal Revision Cases.
- c) Thereafter, the second petitioner / A-2 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 learned Metropolitan Magistrate Fast Track IV, George Town, Chennai;
- d) The second petitioner / A-2 and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.
- e) The second petitioner / A-2 shall appear before the Trial Court at 10.30 a.m. on the first working day of every English Calendar Month, until the disposal of the revision cases and if he is not able to appear before the Trial Court on any day, due to unavoidable circumstances, 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 his absence, as directed by the Trial Court. Such an application shall not be entertained often.

On the failure of the second petitioner / A-2, depositing 10% of the compensation amount(s), it is open to the Trial Court to commit the second petitioner / A-2 into custody for undergoing the sentences, concurrently.

-sd/-

20/12/2019

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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 XV ADDITIONAL SESSIONS COURT,
CHENNAI.

2 THE METROPOLITAN MAGISTRATE,
FAST TRACK COURT NO.IV,
GEORGE TOWN, CHENNAI.

3 THE CHIEF METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI. [FOR INFORMATION]

+1 C.C. to M/S.C.M.GUNASEKARAN Advocate on payment of necessary
charges SR.NO.26461, 26462, 26463, 26464, 26465, 26466

Order

in

Crl.M.P.Nos.16339, 16356, 16358, 16340,16359 &
16341 of 2019
in Crl.RC.Nos.1220 & 1222 of 2019

Date :20/12/2019

From 7.2.2001 the Registry is issuing certified
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