

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.16475 & 16477 of 2019

IN CRL.RC.NO.1235 OF 2019

K.MOHAMMED RIZWAN

[PETITIONER]

vs

M/S.HAMDAAN LEATHERS, REP BY
ITS OWNER, K.NAHIB AFROZE,

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.1235/2019 on the file of the High Court, the High Court will be pleased to

[I]suspend the sentence of the order of conviction to undergo simple imprisonment for two months under section 255(2)Cr.P.C. And also directed the petitioner to pay Rs.1,00,000/- as compensation to the complainant within two months under section 357(3)Cr.P.C. failing which to undergo two months simple imprisonment by the order dated 21.05.2018 by Addl.District Munsiff Cum Judicial Magistrate, Ambur, Vellore Dist, for offence under section 138 of Negotiable instruments Act which was confirmed by IIIrd Addl.Sessions, Vellore, at Thirupathur in C.A.No.101/2018 dated 23.10.2019 and release the petitioner on bail pending Crl.Rc.No.1235/2019.[CRL.MP.NO.16475/2019]

[II]exempt the petitioner from surrendering before the court of Addl. District Munsiff cum Judicial Magistrate, Ambur,Vellore district in C..CNO.83 of 2013 for an offence under section 138 of Negotiable instrument Act and was convicted to undergo simple imprisonment for Two months and also to pay a sum of Rs.1,00,000/-as compensation to the complainant within two months failing which the petitioner has to undergo two months simple imprisonment which was confirmed by the III Addl.Sessions, vellore @ Tirupattu in C.A.NO.101 OF 2018 dated 23.10.2019 pending disposal of the criminal revision petition.[CRL.MP.NO.16477/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.1235/2019 on the file of the High Court and upon hearing the arguments of M/S.C.V.KUMAR Advocate for the petitioner, 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 21.05.2018 passed in C.C.No.83 of 2013 by the learned Additional District Munsif cum Judicial Magistrate, Ambur, Vellore District, as confirmed in the judgment, dated 08.04.2019, made in Crl.A.No.178/2017, by the learned third Additional Sessions Judge, Vellore, Thirupathur in C.A.No. 101 of 2018, dated 23.10.2019 and to exempt the Petitioner/ Accused, from surrendering before the Trial Court, in connection with the conviction and sentence, imposed by the judgment, dated 21.05.2018 passed in C.C.No.83 of 2013 by the learned Additional District Munsif cum Judicial Magistrate, Ambur, Vellore District,, 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 two months Simple Imprisonment and to pay a fine of Rs.1,00,000/- (Rupees One Lakh Only), as compensation to be paid within two months to the Respondent/complainant, in default, to undergo two months Simple Imprisonment.
4. 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 50% of the cheque amount (Rs.1,00,000/-), namely, Rs.50,000/- (Rupees Fifty 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.

- b) 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 learned Additional District Munsif cum Judicial Magistrate, Ambur, Vellore District,
- c) 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.
- d) 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.
- e) 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.

-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.

WEB COPY

TO

1 THE ADDITIONAL DISTRICT
MUNSIF CUM JUDICIAL MAGISTRATE,
AMBUR,
VELLORE DISTRICT

2 THE CHIEF JUDICIAL MAGISTRATE
VELLORE [FOR INFORMATION]

3 THE III ADDITIONAL DISTRICT
SESSIONS JUDGE, VELLORE AT THIRUPATHUR
<https://hcservices.ecourts.gov.in/hcservices/>

+2 C.C. to M/S.C.V.KUMAR Advocate on payment of necessary charges SR.NO. 23269

Order

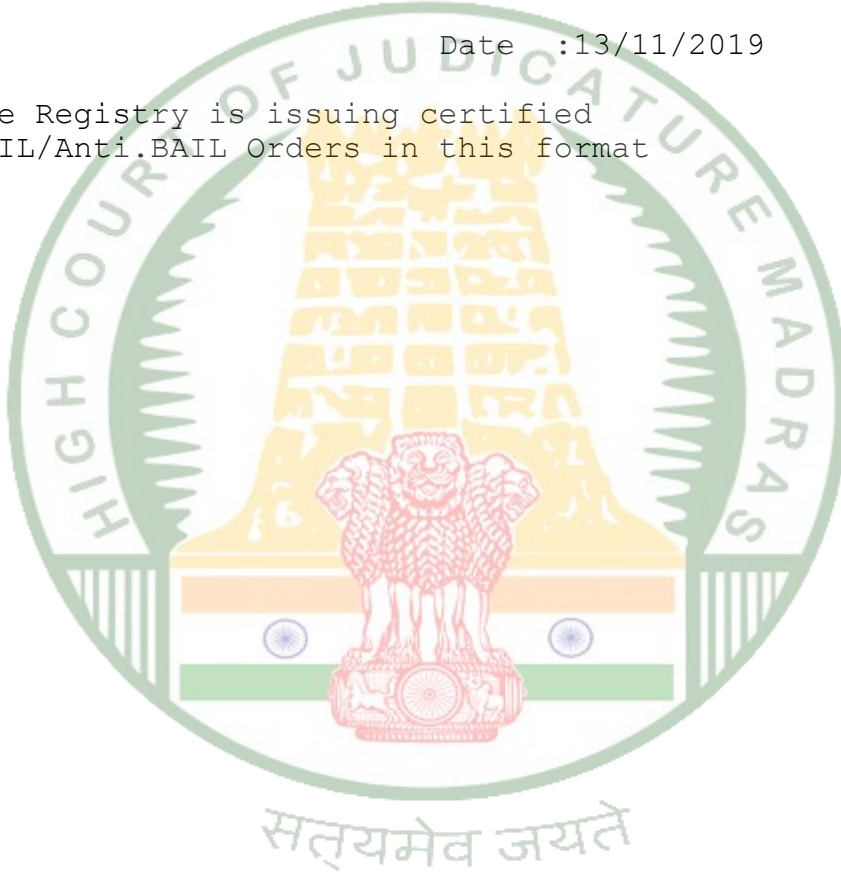
in

CRL MP.16475 and 16477/2019

IN CRL.RC.NO.1235 OF 2019

Date :13/11/2019

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format
RD 13/11/2019



WEB COPY