

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Fifteenth day of November Two Thousand Nineteen

PRESENT

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

CRIMINAL MISCELLANEOUS PETITION No.16748 and 16749 of 2019

IN CRL.RC.NO.1243 OF 2019

1 M/S.BRIGHT SPINNERS [PETITIONER
REP.BY ITS PARTNER K.DEVASENATHIPATHY, IN CRL.MP.NO.16748/2019]

2 K.DEVASENATHIPATHY
3 K.THANARAJU

Vs

T.RAJENRAN [RESPONDENT
IN CRL.MP.NO.16748/2019]

1 K.DEVASENATHIPATHY [PETITIONER
2 K.THANARAJU IN CRL.MP.NO.16749/2019]

Vs.

1 T.RAJENDRAN [RESPONDENT
2 M/S.BRIGHT SPINNERS IN CRL.MP.NO.16749/2019]
REP.BY ITS PARTNER K.DEVASENATHIPATHY,

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.1243/2019 on the file of the High Court, the High Court will be pleased to

[i]suspend the sentence and the conviction imposed on the petitioners in the judgment dated 06.09.2019 made in CA.No.235 of 2018 on the file of the 5th Additional District and Sessions Judge, Coimbatore against the order made in Judgement dated 18.01.2012 made in C.C.NO.58 OF 2011 on the file of the Judicial Magistrate No.II, coimbaore.[CRL.MP.NO.16748/2019]

[ii]Exemption from surrendering the conviction imposed on the petitioner in the Judgment dated 06.09.2019, made in C.A.No.235 of 2018 on the file of the 5th Additional District and Sessions Judge, Coimbatore against the order made in Judgement dated 18.01.2012 made in C.C.NO.58 OF 2011 on the file of the Judicial Magistrate No.II, coimbaore.[CRL.MP.NO.16749/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.1243/2019 on the file of the High Court and upon hearing the arguments of M/S.GK.MUTHUKUMAAR, Advocate for the petitioner the court made the following order:-

These Criminal Miscellaneous Petitions have been filed by the Petitioners/A1 to A3, seeking suspension of sentence of imprisonment, imposed by the judgment dated 06.09.2019 made in Crl.A.No.235 of 2018, by the 5th Additional District and Sessions Judge, Coimbatore, reversing the judgment of acquittal passed in C.C.No.58 of 2011 dated 18.01.2012 by the Judicial Magistrate No.II, Coimbatore and to exempt the Petitioners/A1 to A3, from surrendering before the Trial Court, in connection with the conviction and sentence, imposed by the judgment dated 18.01.2012, made in C.C.No.58 of 2011, by the Judicial Magistrate No.II, Coimbatore, respectively, pending disposal of the Criminal Revision Case.

2. 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.3,00,000/- by the Petitioner/A1 Firm and that the petitioner/A1 was convicted for the offence under Section 138 of the Negotiable Instruments Act, to pay a compensation of Rs.2,00,000/- to the complainant and the petitioners/A2 and A3 were convicted for the offence under section 138 of the Negotiable Instrument Act and sentenced to undergo six months Simple Imprisonment and to pay a sum of Rs.50,000/- (Rupees Fifty Thousand Only) each as compensation to the Respondent/complainant, in default, to undergo one month Simple Imprisonment each.

4. The learned counsel for the petitioners would submit that the 1st petitioner is a partnership firm and the 2nd and 3rd petitioners are the partners. He would submit that the trial Court, by well considered the order, appreciating the evidence on record, finding that the accused had rebutted the presumption, had acquitted them for the offence under Section 138 of the Negotiable Instruments Act. However, the Appellate Court, on wrong appreciation of law and facts, had reversed the Judgment of acquittal of the trial Court and convicted the petitioners. He would further submit 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 Petitioners /A1 to A3 have got a fair chance of succeeding in the Criminal Revision Cases and hence, the sentence imposed against the Petitioners/A1 to A3 may be suspended and the Petitioners A2 & A3 may be exempted from surrendering before the Trial Court. He further submitted that the trial Court had acquitted the petitioners/A1 to A3. However, without prejudice to the contentions, the petitioners/A1 to A3 are ready to deposit 20% of the cheque amount before the trial Court.

5. Considering the facts and circumstances of the case and also considering the submissions of the learned counsel for the petitioners/A1 to A3, this Court is of the view that the substantive sentence of imprisonment of A2 and A3 and the sentence of payment compensation of Rs.2,00,000/- by A1 can be suspended on certain conditions. Accordingly, till the disposal of the Criminal Revision Cases, the reliefs of exemption from surrender before the Trial Court, suspension of sentence and bail are granted, on the following conditions :-

- a) Each of the Petitioners/A1 to A3 shall deposit a sum of Rs.20,000/- (Rupees Twenty Thousand Only) each thereby totalling to Rs.60,000/- (Rupees Sixty Thousand Only), which is 20% of the cheque amount viz., Rs.3,00,000/- before the Trial Court, within a period of 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 Petitioners/A2 and A3 are ordered to be released on bail, on each of them 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, No. II, Coimbatore.
- c) The Petitioners/A2 and A3 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 Petitioners/A2 and A3 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 they are not able to appear before the Trial Court on any day, they 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 their absence, as directed by the Trial Court.
- e) On the failure of the Petitioners, depositing the said amount, it is open to the Trial Court to commit the Petitioners 2 and 3 into custody for undergoing the sentence.

Post the matter on 16.12.2019 for reporting compliance.

-sd/-
15/11/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

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High Court, Madras - 600 104.

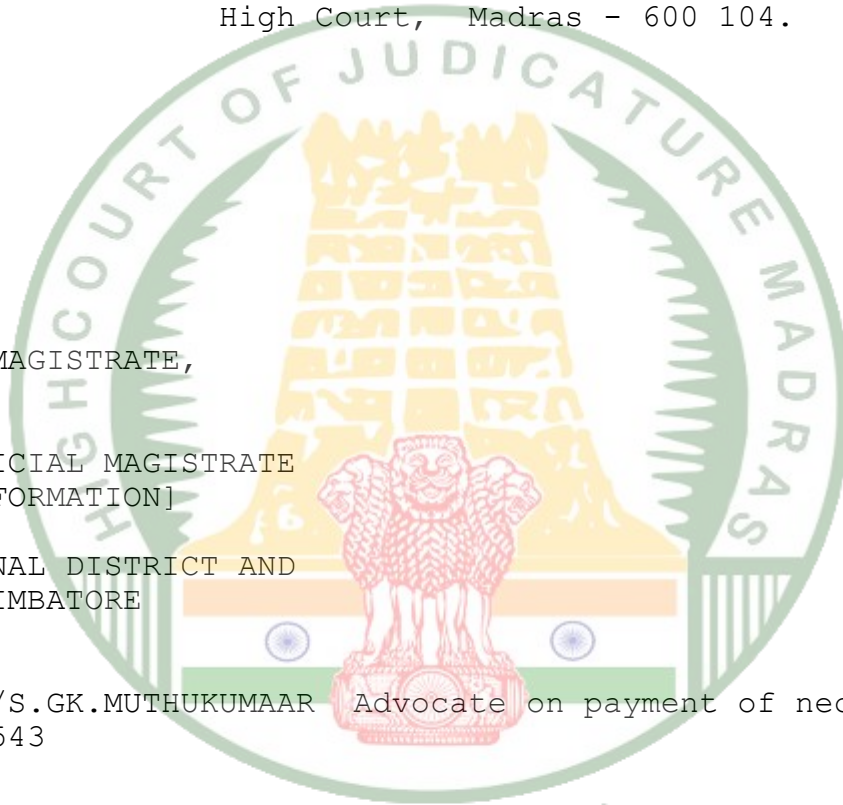
TO

1 THE JUDICIAL MAGISTRATE,
NO.II, COIMBATORE

2 THE CHIEF JUDICIAL MAGISTRATE
COIMBATORE[FOR INFORMATION]

3 THE V ADDITIONAL DISTRICT AND
SESSIONS JUDGE, COIMBATORE

+1 C.C. to M/S.GK.MUTHUKUMAAR Advocate on payment of necessary charges SR.NO. 23543



सत्यमेव जयते Order

in

CRL MP.16748 and 16749/2019

IN CRL.RC.NO.1243 OF 2019

Date :15/11/2019

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RD 25/11/2019