

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Sixth day of December Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice R. MAHADEVAN

CRIMINAL MISCELLANEOUS PETITION No.18052 of 2019

IN CRL.RC.NO.1345 OF 2019

MUKESH KUMAR SURANA

[PETITIONER/APPELLANT]

Vs

M/S.GALADA FINANCE LTD
REP.BY ASHOKKUMAR GALADA,

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.1345 OF 2019 on the file of the High Court, the High Court will be pleased to grant suspension of sentence imposed in CC.No.9868 of 2006 by the learned VIIIth Metropolitan Magistrate, George Town, Chennai and confirmed by IVth Additional Sessions Judge, City Civil Court, Chennai in Crl.M.P.17652/2015 in C.A.No.164 of 2012 dated 06/07/2019 to grant bail to the petitioner till the disposal of the Crl.RC.NO.1345 of 2019.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.1345 OF 2019 on the file of the High Court and upon hearing the arguments of M/S V.RAMAMURTHY Advocate for the petitioner the court made the following order:-

By judgment, dated 27.08.2012 passed by the learned VIII Metropolitan Magistrate, George Town, Chennai-1, in C.C.No.9868 of 2006, the petitioner was convicted for the offence under Section 138 of the Negotiable Instruments Act and was sentenced to undergo simple imprisonment for a period of six months and further directed to pay compensation of Rs.1,50,000/- to the complainant within a period of one month. Challenging the said conviction and sentence, the petitioner preferred an appeal in Crl.A.No.164 of 2012 before the learned IV Additional Sessions Judge, City Civil Court, Chennai, in which, the order of conviction and sentence imposed by the trial court was confirmed. Aggrieved over the same, the petitioner filed the present Criminal Revision Case. He also filed a Miscellaneous Petition seeking suspension of sentence, pending disposal of this Criminal Revision.

2.According to the learned counsel for the petitioner, the petitioner has already deposited the cheque amount of Rs.1,50,000/- in Court Account and he has also produced a proof for the same.

Further, according to the learned Counsel for the petitioner, there

are copious materials on record to prove that there is no legally enforceable debt and the petitioner has rebutted the presumption contemplated under Section 139 of the Negotiable Instruments Act. The learned counsel also submitted that there are arguable points available in the Criminal Revision Case, which is not likely to be taken up for final hearing in the near future and hence, the substantive sentence imposed against the petitioner may be suspended and the Petitioner may be exempted from surrendering before the Trial Court.

3. Heard the learned counsel for the petitioner and also perused the materials placed on record.

4. 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 (Cr1) 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.

5. In the light of the aforesaid legal proposition and considering the facts and circumstances of the case and also taking note of the submissions of the learned counsel for the petitioner, this Court is of the view that the substantive sentence of imprisonment alone can be suspended subject to 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) Since the petitioner has already deposited the cheque amount of Rs.1,50,000/- before the trial court, the Trial Court shall redeposit the said amount in a fixed deposit account in any nationalized bank. 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 VIII Metropolitan Magistrate, George Town, Chennai-1;
- 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 10.30a.m. on the first working day of every month, until the disposal of the revision case 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.

Post the matter on 06.01.2020 for 'reporting compliance'.

-sd/-

06/12/2019

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 VIII METROPOLITAN MAGISTRATE,
GEORGE TOWN, CHENNAI-1.

2 THE CHIEF METROPOLITAN
MAGISTRATE, EGMORE, CHENNAI (FOR INFORMATION)

3 IV ADDITIONAL SESSIONS JUDGE,
CITY CIVIL COURT, CHENNAI.

+2 C.C. to M/S V.RAMAMURTHY Advocate on payment of necessary charges SR.nO.25255

Order

in

CRL MP.18052/2019

IN CRL.RC.NO.1345 OF 2019

Date :06/12/2019

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

RVR 17/12/2019