

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Nineteenth day of December Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice R. MAHADEVAN

CRIMINAL MISCELLANEOUS PETITION No.17440 of 2019

IN CRL.RC.NO.1289 OF 2019

J.AMBROSE
S/O.JOSEPH

[PETITIONER / PETITIONER]

PROPRIETOR, M/S.VENUS PAPER & PAPER BOARD

Vs

M/S. SHRI PAVAZHABIGAI PAPER
& BOARD PVT. LTD.,,
POWER AGENT P.MADHANMOHAN

[RESPONDENT / RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.RC.No.1289/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence passed in Judgment in Crl.A.No.113 of 2019 on the file of the Principal Session Court at Erode dated 09.07.2019 confirming the judgment in STC.No.81 of 2016 on the file of Judicial Magistrate/Fast Track Court No.2 at Erode, dated 27.03.2019 and to enlarge the Petitioner on bail, pending disposal of the above Crl.RC.NO.1289/2019.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.RC.No.1289/2019 on the file of the High Court and upon hearing the arguments of M/S. MA.P.THANGAVEL, Advocate for the petitioner and of NO APPEARANCE on behalf of the Respondent the court made the following order:-

The petitioner faced trial in STC.No.81 of 2016 on the file of learned Judicial Magistrate, Fast Track Court No.2, Erode. Under judgment dated 27.03.2019, the trial Court convicted him under Section 138 of the Negotiable Instruments Act and sentenced him to undergo simple imprisonment for One Year and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for further period of three months. On appeal in C.A.No.113/2019, the conviction and sentence imposed by the trial Court were confirmed by the learned Principal Sessions Judge, Erode, by judgment dated 09.07.2019. As against the aforesaid conviction and sentence, the petitioner has filed the Criminal Revision, along with the present petition seeking suspension of sentence.

2.It is the specific case of the learned counsel for the petitioner that tampering of document has taken place and Stock Statement marked as Ex.P.4 before the trial court is not the original stock statement. In this regard, the learned counsel drew the attention of this Court to paragraph 3 of the Grounds of Revision, which for better appreciation, reads as follows:

'3. That the both courts below failed to appreciate that the complainant has not approached the court with clean hands wherein in the proof affidavit of P.W.1 (Complainant) in para-9, it is stated that on 31.3.2014, the Tamil Nadu Mercantile Bank has issued 'Stock Statement' which has been produced in Arbitration OP. But on the other hand the Ex.P.13, the Arbitration OP petition wherein in the column No.3, in the List of Documents, it is mentioned as 'Stock Statements forwarded by the petitioner to their banker viz. Tamil Nadu Mercantile Bank Ltd., But interestingly the Stock Statement shown in S.No.4 of the List of Documents in STC.No.81 of 2016, dated 31.03.2014 produced along the complaint copy and there is a seal dated 24.11.2014.

But however on seeing the Ex.P.4 the certified copy it is mentioned the date of Ex.P.4 is 30.04.2014 and the recitals and amounts, figures in those documents are one and the same. Moreover it is crystal clear that the copy of the stock statement dated 31.3.2014 also contains the seal of Judicial Magistrate Court at Coimbatore, but however tampering the said documents from the court records the present Ex.P.4 dated 30.4.2014 has been inserted for the reasons best known to them.'

Thus, according to the learned counsel, 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.

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

4.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 suspension of sentence and bail are granted, on the following conditions:-

- a) 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 Judicial Magistrate, Fast Track Court No.2, Erode ; and

- b) 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;
- c) 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 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 20.01.2020 for reporting compliance.

-sd/-
19/12/2019

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 THE PRINCIPAL SESSIONS JUDGE
ERODE.

2 THE JUDICIAL MAGISTRATE,
FAST TRACK COURT NO.2, ERODE.

3 THE CHIEF JUDICIAL MAGISTRATE,
ERODE [FOR INFORMATION]

+1 C.C. to M/S. MA.P.THANGAVEL Advocate on payment of necessary charges SR.No.26215

Order

in
CRL MP.17440/2019
in
CRL.RC.1289/2019

Date :19/12/2019