

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.18145 of 2019

IN CRL.RC.NO.1367 OF 2019

1 M/S.SRI ARAVINDAR EDUCATIONAL TRUST [PETITIONER]
REP BY ITS AUTHORISED SIGNATORY
S.NITHYANANDAM,

2 S.NITHYANANDAM

Vs

M/S.KOTAK MAHINDRA BANK LIMITED [RESPONDENT]
REP BY ITS CHIEF MANAGER,
PONRAJ THANGADURAI,

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.1367/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence to the petitioner by order dated 26.09.2019 in Criminal Appeal No.167/2019 on the file of XV Additional Sessions Court, Chennai confirming the order dated 21.03.2019 in C.C No.2750/2019 on the file of Metropolitan Magistrate, FTC-IV, George Town, chennai pending disposal of the criminal revision petition. [CRL.MP.NO.18145/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.1367/2019 on the file of the High Court and upon hearing the arguments of M/S.R.RAJARAJAN Advocate for the petitioner the court made the following order:-

By judgment, dated 21.03.2019 passed by the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, in C.C.No.2750 of 2016, the petitioners were convicted for the offence under Section 138 of the Negotiable Instruments Act and the second petitioner / second accused was sentenced to undergo simple imprisonment for a period of ten months and was directed to pay compensation of Rs.2,00,00,000/- with interest at the rate of 9% per annum from the date of dishonour of the cheque, to the complainant, within a period of one month, failing which, he shall undergo simple imprisonment for a further period of two months. Challenging the said conviction and sentence, the petitioners preferred an appeal in Crl.A.No.167 of 2019 before the XV Additional Sessions Court,

Chennai, in which, the Appellate Court has confirmed the judgement of the Trial Court in respect of compensation amount, conviction and sentence, but set-aside the judgement in respect of the interest at the rate of 9% per annum for the cheque amount. Aggrieved over the same, the petitioners have filed the present Criminal Revision Case, along with a Miscellaneous Petition seeking suspension of sentence, pending disposal of this Criminal Revision.

2. According to the learned counsel for the Petitioners, 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. The learned counsel has 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 petitioners may be suspended.

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

4. The Sessions Court, while dealing with the Appeal against the conviction, has sufficient power to direct the accused to pay the entire compensation or a portion thereof where the compensation amount is heavy. For suspending the sentence at the request of convict, on presenting the appeal against the order of conviction under Section 138 of the Negotiable Instruments Act, it is advisable that the Court should impose a condition of payment for suspending the sentence of imprisonment and the compensation within a certain period. In the present case, the appellate Court has directed the petitioners to pay the compensation of Rs.2,00,00,000/-, without giving any time frame for mobilizing funds.

5. Hence, considering the facts and circumstances and also taking note of the submissions made by the learned counsel for the petitioners, 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 relief of suspension of sentence is granted, upon the following conditions:-

a) The Petitioners / Accused shall deposit a sum of Rs.20,00,000/- (Rupees Twenty Lakhs Only) before the Trial Court, on or before 20.12.2019 and thereafter, Rs.30,00,000/- (Rupees Thirty Lakhs only) on or before 20.01.2020;

b) On such deposit being made, the Trial Court shall redeposit the said amount in Fixed Deposit Account(s), in any Nationalized Banks. The disbursal of this amount shall be decided at the culmination of the Criminal Revision Case.

c) Upon compliance of the first condition on or before 20.12.2019, by the petitioners, the second petitioner / second 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 Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai;

d)The second petitioner / second accused 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 / second accused shall appear before the Trial Court at 10.30 a.m. on the first working day of every English Calender 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 her absence, as directed by the Trial Court. Such an application shall not be entertained often.

f)On the failure of the second petitioner / second accused, depositing the said amounts within the time stipulated, as aforesaid, it is open to the Trial Court to commit the petitioners / Accused into custody for undergoing the sentence.

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

2 THE CHIEF METROPOLITAN
MAGISTRATE,EGMORE[FOR INFORMATION]

3 THE XV ADDITIONAL SESSIONS
COURT,CHENNAI

+1 C.C. to M/S.R.RAJARAJAN Advocate on payment of necessary charges SR.NO. 25252

Order

in
CRL MP.18145/2019

IN CRL.RC.NO.1367 OF 2019

Date :06/12/2019

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