

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.12.2019

CORAM:

THE HON'BLE Mr. JUSTICE R.MAHADEVAN

Criminal Revision Case No.1381 of 2019

1. Mr. L.Kuttalingam
Proprietor Lingam Gensets
2. Lingam Gensets,
Rep. by its Proprietor,
Mr. L.Kuttalingam

... Petitioners /
Accused

..VS..

PERI Institute of Technology,
Rep. by Mr. K.Ravi,
No.1 Mannivakkam, Near West Tambaram,
Chennai 600 048

... Respondent /
Complainant

Criminal Revision Case filed under Section 397 and 401 of the Criminal Procedure Code to set-aside the order, dated 11.11.2019 passed in Crl.M.P.No.6014 of 2019 in S.T.C.No.6869 of 2015 on the file of the learned Judicial Magistrate, Tambaram.

For Petitioners : Mr. V.V.Sairam

O R D E R

The issue involved in this Criminal Revision Case lies on a narrow compass, hence this Case is taken up for final disposal at the admission stage itself.

2. The petitioners / accused were tried in S.T.C.No.6869 of 2015 for the alleged offence under Section 138 of the Negotiable Instruments Act, by the learned Judicial Magistrate, Tambaram. After due trial, the petitioners / accused were found guilty and were directed to pay a sum of Rs.16,00,000/- as compensation to the respondent herein / complainant. The petitioners were also sentenced to undergo six months simple imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three months simple imprisonment, by virtue of the judgment, dated 11.10.2019 in S.T.C.No.6869 of 2015. On the same day, the Court below also suspended the sentence of the first petitioner for a period of 30 days to enable him to prefer the Appeal. On 08.11.2019, the petitioners have filed a petition in Crl.M.P.No.6014 of 2019 seeking extension of suspension of sentence for a further period of four weeks on the ground that he was suffering from Acute Viral Hepatitis. On 11.11.2019, the trial court has rejected the said petition by holding that no documents have been

produced by the first petitioner to show that he was suffering from the said illness. Challenging the same, the present Criminal Revision Case has been filed by the petitioners / accused.

3. Heard the learned counsel appearing for the petitioners.

4. The main contentions raised by the learned counsel appearing for the petitioners / accused are that the Court below failed to see that the first petitioner was suffering from acute viral hepatitis; the Court below erred in observing that the first petitioner did not file medical certificate when in fact the same was filed; and the Court below failed to follow the dictum laid down by this Court in CrI.R.C.No.859 of 2010 (M/s. Santhosh Traders v. M/s. M.R.L.Agencies), dated 18.08.2010 wherein in identical facts and circumstances, this Court set-aside the order of the trial court and granted time to the petitioner therein to present papers and obtain orders of the appellate court.

5. This Court has considered the said submissions made by the learned counsel for the petitioners and perused the materials available on record.

6. In the case at hand, the Trial Court has rejected the petition for extension of suspension of sentence filed by the petitioners on the ground that the first petitioner has not produced any material to show that he was suffering from acute viral hepatitis. However, in the cases of Kiran Kumar v. State of M.P. (2000) 41 All Cr.C. 884 (884) (SC) : JT 2000 Supp (1) SC 208; Bhagwanram Shinde v. State of Gujarat 1999 (39) ACC 302 (SC) and Arjun Gop v. State of Chhattisgarh, 2014 CrI.L.J. 4101 (Chh.) it has been held that where a person is sentenced to short term imprisonment, the normal rule is that pending Appeal, the sentence should be suspended and rejection is only a way of exception. It is trite in law that while considering an application for suspension, the trial court has to record reasons in writing and the requirement of recording of reasons must be preceded by careful consideration of the relevant aspects of the case at hand including issues of human rights or other relevant aspects, as envisaged under Article 21 of the Constitution of India. Hence, this Court is of the opinion that since in this case the sentence being short term, the trial court ought to have given atleast one opportunity to the first petitioner herein to produce the relevant document to prove his illness and then, decide the petition. If the petition is rejected without considering it on merits, it would cause a grave prejudice to the accused, as it infringes the rights of the accused.

7. In such view of the matter, the impugned order, dated 11.11.2019, made in Crl.M.P.No.6014 of 2019 by the trial court is set-aside and the suspension of sentence is extended by two weeks from the date of receipt of a copy of this order. The Criminal Revision Case is ordered accordingly.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

srk

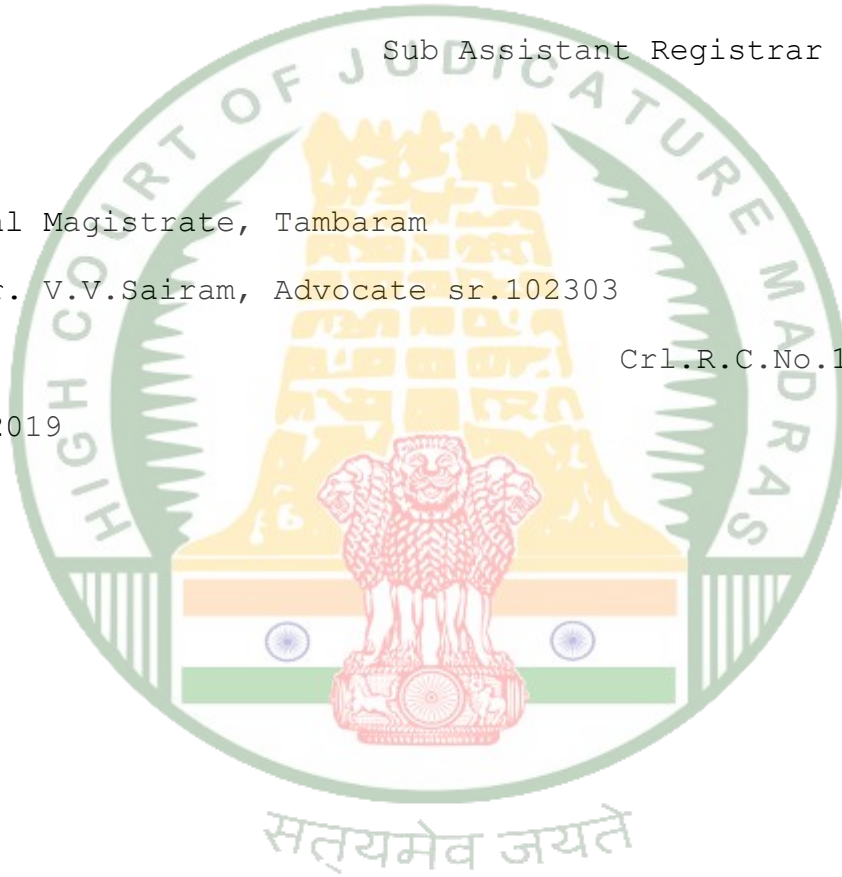
To

1. Judicial Magistrate, Tambaram

+2cc to Mr. V.V.Sairam, Advocate sr.102303

Crl.R.C.No.1381 of 2019

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