



IN THE HIGH COURT OF JUDICATURE AT MADRAS
(Criminal Jurisdiction)

Thursday, the Thirteenth day of February Two Thousand Twenty

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PRESENT

The Hon`ble Mr Justice R. MAHADEVAN

CRIMINAL MISCELLANEOUS PETITION Nos.301 and 304 of 2020

IN CRL.RC.NO.60 OF 2020

R.SAMPATH KUMAR

[PETITIONER / APPELLANT /
ACCUSED]

Vs

P.RAJA

[RESPONDENT / RESPONDENT /
COMPLAINANT]

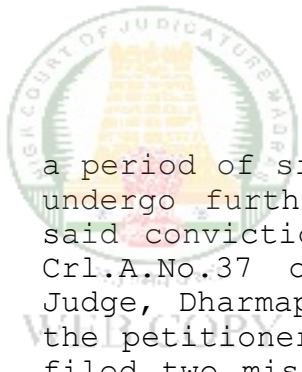
Petitions praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.RC.No.60/2020 on the file of the High Court, the High Court will be pleased to

[i] suspend the sentence of imprisonment imposed in the judgment dated 24.10.2019 made in C.A.No.37 of 2017 on the file of the Learned Additional District and Session Judge, Dharmapuri, confirming the conviction imposed in judgment dated 07.11.2017 made in S.T.C.No.245 of 2013 on the file of the Learned Judicial Magistrate at Harur and enlarge the petitioner on bail pending disposal of the above Crl.RC.No.60/2020. [IN CRL.MP.NO.301/2020]

[ii] exemption from surrendering before the trial Court in pursuance to the judgment dated 24.10.2019 made in C.A.No.37 of 2017 on the file of the Learned Additional District and Session Judge, Dharmapuri, confirming the conviction imposed in judgment dated 07.11.2017 made in S.T.C.No.245 of 2013 on the file of the Learned Judicial Magistrate at Harur, pending disposal of the above Crl.RC.No.60/2020. [IN CRL.MP.NO.304/2020]

Order : These petitions coming on for orders upon perusing the petitions and the Memorandum of Grounds in Crl.RC.No.60/2020 on the file of the High Court and upon hearing the arguments of M/S. J.PRADEEP, Advocate for the petitioner the court made the following order:-

By judgment dated 07.11.2017 passed by the learned Judicial Magistrate, Harur in S.T.C.No.245 of 2013, the petitioner was convicted for the offence under Section 138 of the Negotiable Instruments Act, 1881 and was sentenced to undergo simple imprisonment for



a period of six months and to pay a fine of Rs.5,000/-, in default to undergo further simple imprisonment for one month. Challenging the said conviction and sentence, the petitioner preferred an appeal in Crl.A.No.37 of 2017 before the Additional District and Sessions Judge, Dharmapuri, which ended in dismissal. Aggrieved over the same, the petitioner has filed the present Criminal Revision Case. He also filed two miscellaneous petitions seeking suspension of sentence and exemption from surrendering before the trial Court, pending disposal of this Criminal Revision.

2. According to the learned counsel for the petitioner, the Trial Court has failed to note that absolutely there is no evidence on record to prove that the disputed cheque relates to the present transaction between the petitioner and the respondent. The learned counsel further 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.

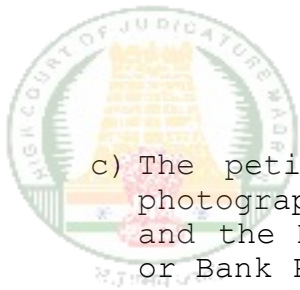
3. Heard the learned counsel for the petitioner and also perused the materials placed on record.

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 (Crl) 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. 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 a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) as ordered by this Court 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) 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, Harur, Dharmapuri District;



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.

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d) 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.

-sd/-

13/02/2020

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 ADDITIONAL SESSION JUDGE
DHARMAPURI

2 THE JUDICIAL MAGISTRATE,
AT HARUR .DHARMAPURI DISTRICT

3 THE CHIEF JUDICIAL MAGISTRATE
DHARMAPURI[FOR INFORMATION]

+1 C.C. to J.PRADEEP Advocate on payment of necessary charges
SR.NO. 2928

Order

in
CRL MP.301 AND 304 /2020

IN CRL.RC.NO.60 OF 2020

Date :13/02/2020

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
RD 19/02/2020