

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Sixth day of February Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice R. MAHADEVAN

CRIMINAL MISCELLANEOUS PETITION No.1505 of 2020

IN CRL.RC.NO.206 OF 2020

RAJESHWARI DEVADASS

[PETITIONER]

Vs

K.THAVAMANI

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.206/2020 on the file of the High Court, the High Court will be pleased to Suspend the sentence passed by the Learned Sessions Judge of Udhagamandalam in C.A NO. 12/2019 Dated 13.01.2020 partly confirming the order of conviction passed by the Learned Judicial Magistrate Fast Track Court, coonoor in C.C.NO.6 of 2015, dated 13.12.2018 and pass such further or other orders.[CRL.MP.NO.1505/2020]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.206/2020 on the file of the High Court and upon hearing the arguments of M/S. V.RAVI, Advocate for the petitioner, the court made the following order:-

By judgment, dated 13.12.2018 passed by the Judicial Magistrate, Fast Track Court, Coonoor, in C.C.No.6 of 2015, 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 one year and was further directed to pay compensation of Rs.20,00,000/- to the complainant within a period of two months, failing which, she shall undergo simple imprisonment for a further period of three months. Challenging the said conviction and sentence, the petitioner preferred an appeal in Crl.A.No.12 of 2019 before the Sessions Court, Nilgiris at Udhagamandalam, in which, the order of conviction and payment of compensation was affirmed and the sentence alone was modified to six months. Aggrieved over the same, the petitioner filed the present Criminal Revision Case. She also filed this Miscellaneous Petition seeking suspension of sentence, pending disposal of this Criminal Revision.

2. According to the learned counsel for the petitioner, the complaint of the respondent is in respect of purchase of property and he failed to discharge his initial onus of burden in proving the case. The learned counsel also submitted that without any documentary evidence in the form of a pronote or any other receipt in writing,

the theory of giving a sum of Rs.20,00,000/- by the complainant cannot be believed. It is his specific case that the subject cheques were illegally taken away from the son of the petitioner for the purpose of harassing her. It is also submitted that the vital document with regard to the filing of Income Tax returns of the complainant for the Assessment Year 2014-15, relied upon by the petitioner, was not considered by both Courts below. 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. Hence, the learned counsel submitted that 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 shall deposit 50% of the cheque amount viz., Rs.10,00,000/- (Rupees Ten Lakhs Only) before the Trial Court, within four weeks from the date of receipt of a copy of this order;
- b) On such deposit being made, the Trial Court shall redeposit the said amount in a fixed deposit account in any nationalized bank. The disbursement of this amount shall be decided at the culmination of the Criminal Revision Case.
- c) Thereafter, the Petitioner/Accused is ordered to be released on bail, on her 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 (Magisterial Level), Coonoor;
- d) 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.
- e) 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 she is not able to appear before the Trial Court on any day, due to unavoidable circumstances, she 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 Petitioner/Accused, depositing the said amount, it is open to the Trial Court to commit the Petitioner/Accused into custody for undergoing the sentence.

5. Post the matter on 06.03.2020 'for reporting compliance'.

-sd/-
06/02/2020

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 JUDICIAL MAGISTRATE,
FAST TRACK COURT[MAGISTERIAL LEVEL]
COONOR

2 THE SESSIONS JUDGE
NILGIRIS AT UDHAGAMANDALAM

+1 C.C. to M/S. V.RAVI Advocate on payment of necessary charges
SR.NO. 2420

Order
in
CRL MP.1505/2020

IN CRL.RC.NO.206 OF 2020

सत्यमेव जयते Date:06/02/2020

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
RD 13/02/2020

WEB COPY