

IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Criminal Jurisdiction )

Thursday, the Twelfth day of March Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice P. RAJAMANICKAM

CRIMINAL MISCELLANEOUS PETITION No.2882 of 2020

IN CRL.RC.NO.387 OF 2020

M.JAGANNATHAN

[ PETITIONER ]

Vs

P.RICHARD

[ RESPONDENT ]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.387 of 2020 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner in STC No.17/2016 by an judgment dated 04.04.2017 on the file of Learned Judicial Magistrate, Fast Track Court, Magisterial Level at Tiruvallur and confirmed in Criminal Appeal No.63/2017 by the Principal Sessions Judge, Tiruvallur by a Judgment dated 24/09/2019 and release the petitioner on bail pending disposal of the above Crl.RC.NO.387 of 2020.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.RC.NO.387 of 2020 on the file of the High Court and upon hearing the arguments of M/S.K.BALASUBRAMANIAM, Advocate for the petitioner and of M/S.AMAR D.PANDIYA on behalf of the Respondent the court made the following order:-

This Criminal Revision Case has been filed by the Accused against the Judgment passed by the Principal Sessions Judge of Tiruvallur in C.A. No. 63 of 2017 dated 24.09.2019 confirming the Judgment of conviction and sentence passed by the Judicial Magistrate, Fast Tract Court, Tiruvallur in S.T.C. No. 17 of 2016 dated 04.04.2017.

2. The Respondent herein has filed a private complaint under Section 138 of the Negotiable Instruments Act, 1881, stating that the Petitioner/Accused has borrowed a sum of Rs.30,00,000/- (Rupees Thirty Lakh only) from him on 18.07.2014 and agreed to re-pay the same with interest at the rate of 24% per annum, and subsequently, with a view to discharge the said debt, he has issued a cheque dated 03.09.2015 for a sum of Rs.36,60,000/- (Rupees Thirty Six Lakh Sixty Thousand only), and when the said cheque was presented in the bank for encashment, the same was returned as 'account closed' and hence, the Petitioner/Accused is liable to be punished under Section 138 of the Negotiable Instruments Act, 1881.

3. The Judicial Magistrate, Fast Track Court, Tiruvallur has taken the case on file in S.T.C. No. 17 of 2016, and after full trial, by the Judgment dated 04.04.2017 has convicted the Petitioner/Accused for the offence under Section 138 of the Negotiable Instruments Act, 1881, and sentenced him to undergo simple imprisonment for a period of 1 year and 6 months and also directed him to pay a compensation of Rs.36,60,000/- (Rupees Thirty Six Lakh Sixty Thousand only) to the Respondent under Section 357(3) of Cr.P.C. in default he shall undergo further period of 4 months simple imprisonment. Aggrieved by the same, the Petitioner/Accused has filed an Appeal in C.A. No. 63 of 2017 on the file of the Principal Sessions Judge, Tiruvallur. The learned Principal Sessions Judge by the Judgment dated 24.09.2019 has dismissed the said Appeal and thereby confirmed the Judgment of conviction and sentence passed by the Trial Court. Feeling further aggrieved, the Petitioner/Accused has filed the present Criminal Revision Case.

4. The learned Counsel for the Petitioner/Accused has submitted that the Petitioner/Accused had mortgaged his property with the P.W.-4, and at that time, the Petitioner/Accused has issued a blank and signed cheque to the P.W.-4, and subsequently, issued notice to the P.W.-4 calling upon him to return the said cheque. But, the P.W.-4 has refused to receive the said notice, and thereafter, filled up the said cheque in the name of the Respondent/Complainant and filed a private complaint. He further submitted that the Petitioner/Accused is not having any transaction with the Respondent/Complainant and he is not liable to pay any amount to the Respondent/Complainant. He further submitted that without taking into consideration of the aforesaid facts, the Trial Court has convicted the Petitioner/Accused and the Appellate Court also has mechanically confirmed the same. He further submitted that the Petitioner/Accused is having valid defence and he is having chance of success in the Criminal Revision Case, and hence, he prayed to suspend the sentence which was imposed by the Trial Court.

5. Per contra, the learned Counsel for the Respondent/Complainant has submitted that the Petitioner/Accused has borrowed a sum of Rs.30,00,000/- (Rupees Thirty Lakh only) from the Respondent/Complainant and agreed to re-pay the same with interest at the rate of 24% per annum, and only to discharge the said debt, he has issued a cheque for a sum of Rs.36,60,000/- (Rupees Third Six Lakh Sixty Thousand only). He further submitted that when the said cheque was presented in the bank for encashment, the same was returned as 'account closed', and with regard to the same, the Respondent/Complainant has sent a statutory notice and the Petitioner/Accused has received the said notice, but he has not sent any reply nor paid any amount within 15 days, and hence, the Respondent/Complainant was constrained to file private complaint before the concerned Magistrate Court. He further submitted that the Petitioner/Accused failed to discharge the burden that he issued the cheque only to P.W.-4, and taking into consideration of the said fact, the Trial Court has rightly convicted the Petitioner/Accused and the same was confirmed by the Appellate Court, and therefore, he strongly opposed to suspend the sentence.

6. Taking into consideration of the rival submissions, this Court is inclined to suspend the sentence on the following conditions:-

i. The Petitioner/Accused shall deposit 30% of the compensation amount awarded by the Trial Court to the credit of S.T.C. No. 17 of 2016 before the Trial Court, on or before 08.04.2020;

ii. On such deposit being made, the Trial Court shall re-deposit the said amount in a Fixed Deposit Account, in any one of the Nationalized Banks, renewable thereafter periodically. The disbursal of this amount shall be decided at the culmination of the Revision;

iii. Thereafter, 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 blood relative, each for a like sum to the satisfaction of the learned Judicial Magistrate, Fast Track Court, Tiruvallur;

iv. 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;

v. The Petitioner/Accused shall appear before the Trial Court on the first working day of every month at 10.30 a.m., until the disposal of the Revision, 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.P.C. and shall appear before the Trial Court. Such an application shall not be entertained often; and

vi. 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.

-sd/-

12/03/2020

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, TIRUVALLUR

<https://hcservices.ecourts.gov.in/hcservices/>

2 THE CHIEF JUDICIAL MAGISTRATE  
THIRUVALLUR (FOR INFORMATION)

3 THE PRINCIPAL SESSIONS JUDGE,  
TIRUVALLUR

C.C. to M/S.K.BALASUBRAMANIAM Advocate on payment of necessary  
charges Sr.4937

C.C. to M/S.AMAR D.PANDIYA Advocate on payment of necessary  
charges Sr.4924

Order

in

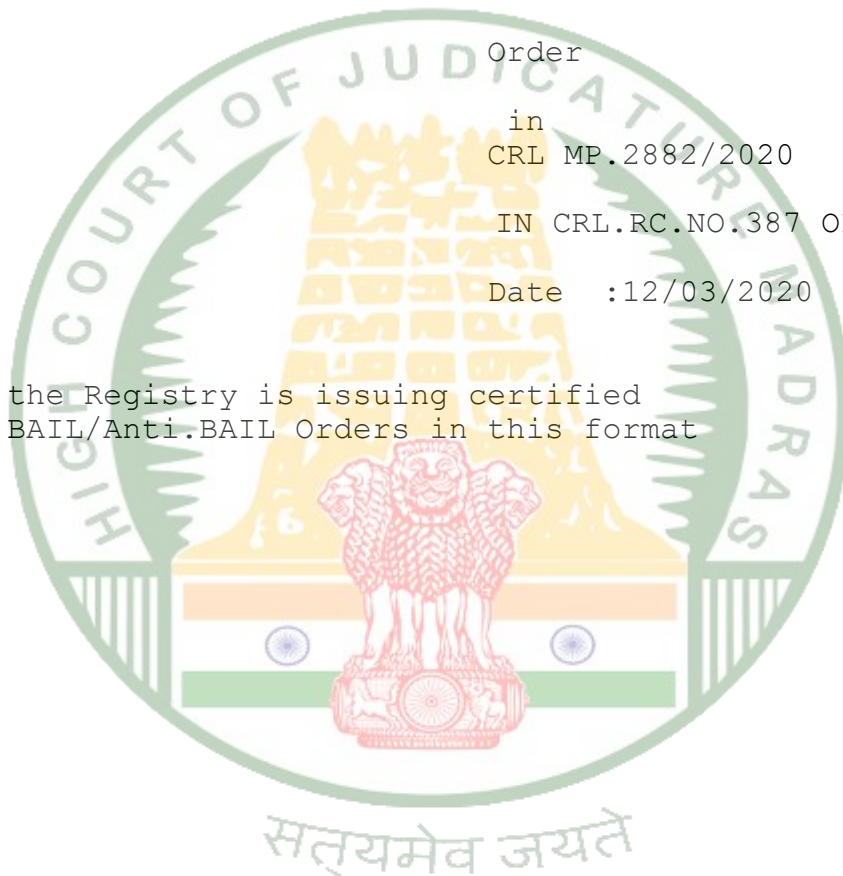
CRL MP.2882/2020

IN CRL.RC.NO.387 OF 2020

Date :12/03/2020

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RVR 12/03/2020



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