

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twenty Eighth day of February Two Thousand Twenty
PRESENT

The Hon`ble Mr Justice R. MAHADEVAN

CRIMINAL MISCELLANEOUS PETITION NOS.2669 & 2671 OF 2020

IN CRL.RC.NO.361 OF 2020

PADMA KUBERAN

[PETITIONER]

Vs

P.GOPINATH

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.RC.NO.361 OF 2020 on the file of the High Court, the High Court will be pleased to

[i] suspend the sentence/conviction passed in C.A.No.88/2018 dated 13.12.2019 on the file of the learned XV Additional Sessions Judge, City Civil Court, Chennai, confirmed the substantial Judgement and conviction dated 09.02.2018 made in C.C.No.1542/2016 on the file of the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, in CRL.RC.NO.361 OF 2020 [IN CRL.MP.NO.2669 OF 2020]

[ii] exempt the petitioner from surrendering before the learned Metropolitan Magistrate, Fast Track Court-IV, George Town, Chennai-1, in pursuance to the judgement dated 13.12.2019 made in C.A.NO.88/2018 on the file of the learned XV Additional Sessions Judge, City Civil Court, Chennai by modifying the default sentence from two month to one month and confirmed the substantial Judgement and conviction dated 09.02.2018 made in C.C.No.1542/2016 on the file of the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, the Petitioner/Accused-3 found guilty under Section 138 of the Negotiable Instruments Act, sentenced to undergo 6 month simple imprisonment and directed to pay compensation of Rs.14,00,000/- to the Respondent within one month in default undergo further two months simple imprisonment, pending disposal of the above CRL.RC.NO.361 OF 2020 [IN CRL.MP.NO.2671 OF 2020]

Order : These petitions coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.RC.NO.361 OF 2020 on the file of the High Court and upon hearing the arguments of M/S.P.SUBBA REDDY, Advocate for the petitioner, the court made the following order:-

By judgment, dated 09.02.2018 passed by the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, in C.C.No.1542 of 2016, the petitioner/A2 was convicted for the offence under Section 138 of the Negotiable Instruments Act and was sentenced to undergo simple imprisonment for a period of six months and further directed to pay compensation of Rs.14,00,000/- to the complainant jointly and severally with other accused, under Section 357(3) Cr.P.C. within a period of one month, failing which, to undergo simple imprisonment for a further period of two months. Challenging the said conviction and sentence, the petitioner preferred an appeal in CrI.A.No.88 of 2018 before the XV Additional Sessions Judge, Chennai, in which, the order of conviction, sentence and payment of compensation were affirmed, but the quantum of default sentence alone was modified to the effect that in default of payment compensation, the petitioner shall undergo simple imprisonment for a further period of one month. Aggrieved over the same, the petitioner has filed the Criminal Revision Case along with 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, 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. 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 can 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 (CrI) 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. In the light of the aforesaid legal propositions and 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) The Petitioner/Accused shall deposit a sum of Rs.3,50,000/- (Rupees three Lakhs and Fifty Thousand Only) before the Trial Court, within a period of six 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, which shall be renewable periodically. 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 Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai;
- 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 10.30a.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 to comply with any of the aforesaid conditions, it is open to the Trial Court to commit the Petitioner/ Accused into custody for undergoing the sentence.

-sd/-
28/02/2020

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 XV ADDITIONAL SESSIONS JUDGE,
CHENNAI.

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

3 THE CHIEF METROPOLITAN MAGISTRATE,
EGMORE, CHENNAI [FOR INFORMATION]

+2C.C. to M/S.P.SUBBA REDDY Advocate on payment of necessary charges SR NOS.4115, 4116

Order

in

CRL MP.2669 & 2671 OF 2020

in

CRL.RC.NO.361 OF 2020

Date :28/02/2020

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MK:03/03/2020