

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.09.2020

PRONOUNCED ON: 17.09.2020

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

CrI.M.P. No.4797 of 2020

in

CrI.R.C. No.651 of 2020

- 1 J.Z. Leather Impex
represented by its Partner
S. Jameel Ahamed
- 2 S. Jameel Ahamed
Partner, J.Z. Leather Impex
- 3 M. Zakeer Hussain
Partner, J.Z. Leather Impex ...Petitioners/Accused 1 to 3

vs.

M. Hussain Ali
Proprietor
Muthu Leather Industries ... Respondent/Complainant

Criminal Revision Petition filed under Section 397 r/w Section 401 Cr.P.C. seeking to call for the records pertaining to the judgment dated 17.02.2020 passed by the II Additional District and Sessions Judge, Erode in CrI.A. No.190 of 2019 filed against the judgment dated 10.07.2019 passed by the Judicial Magistrate (Fast Track Court No.1), Erode, in S.T.C. No.206 of 2018.

For petitioners Mr. D. Ashok Kumar

For respondent No appearance

ORDER

This case was taken up through video conferencing.

2 The facts in brief are thus:

2.1 The petitioners faced four prosecutions under Section 138 of the Negotiable Instruments Act, 1881, initiated by four different complainants before the Judicial Magistrate No.I, Erode and in three cases, viz., S.T.C. Nos.128 of 2018 (complainant being Shaikh Abdullah and cheque amount being Rs.16,74,423/-), S.T.C. No.129 of 2018 (complainant being Damodaran and cheque amount being Rs.24,92,462/-) and S.T.C. No.130 of 2018 (complainant being Farmanullah and cheque amount being Rs.26,83,019/-), all the three

petitioners were convicted on the same day, i.e., on 22.01.2019, by three separate judgments and were sentenced to undergo one year simple imprisonment and the cheque amount in each of the cases was directed to be paid as compensation to the respective complainants, in default to undergo two months simple imprisonment. The trial Court had not stated that the sentences in the three cases should run concurrently. The trial Court suspended the sentences under Section 389(3) Cr.P.C. on the same day.

2.2 The appeals in Crl.A. Nos.55 to 57 of 2019 that were filed by the petitioners were dismissed by the II Additional District and Sessions Judge, Erode on 17.10.2019.

2.3 Challenging the concurrent findings of the two Courts below, the petitioners filed three criminal revision petitions, viz., Crl.R.C. Nos.1275 to 1277 of 2019. They also filed interlocutory applications in each of the criminal revision petitions seeking exemption from surrendering and also seeking suspension of sentence and bail.

2.4 In each of these cases, this Court, by separate orders dated 22.11.2019, suspended the sentences and released the petitioners on bail, on condition that the petitioners shall deposit 50% of the respective cheque amounts within a period of four weeks, in the trial Court and adjourned the matter to 20.12.2019 for reporting compliance.

2.5 Since the petitioners were not able to deposit the 50% of the cheque amount as ordered by this Court, they filed individual petitions in each revision petition, seeking extension of time. These petitions were dismissed by this Court on 29.01.2020. Therefore, on 29.01.2020, the petitioners resigned to their fate and surrendered before the trial Court and were taken into custody for undergoing the sentence.

3 To continue the narration, it is imperative to state about the fourth case against the petitioners, which has been alluded to in paragraph 2.1 supra and which is the subject matter in the instant criminal revision.

3.1 Hussain Ali, the respondent herein, initiated a prosecution in S.T.C. No.206 of 2018 under Section 138 of the NI Act against the petitioners herein before the Judicial Magistrate No.I, Erode, for the dishonour of three cheques, totally valued at Rs.20,85,686/-. The petitioners were convicted in S.T.C. No.206 of 2018 on 10.07.2019 and were sentenced to undergo three months simple imprisonment and were directed to pay a sum of Rs.20 lakhs each, as compensation to the complainant, in default to undergo one month simple imprisonment.

3.2 Challenging the conviction and sentence, the petitioners filed Crl.A. No.190 of 2019 and claiming that the quantum of sentence imposed on the petitioners is inadequate, the complainant filed Crl.A. No.235 of 2019 in the Court of Session, Erode. Both appeals, viz., Crl.A. Nos.190 and 235 of 2019 were heard by the II Additional

District and Sessions Judge, Erode and by common judgment dated 17.02.2020, the appellate Court confirmed the conviction by dismissing Crl.A. No.190 of 2019 filed by the petitioners herein, but, enhanced the sentence from three months simple imprisonment to one year simple imprisonment by allowing Crl.A. No.235 of 2019 filed by the respondent herein.

3.3 Challenging the judgment and order dated 17.02.2020 passed by the appellate Court, in and by which, the sentence of three months simple imprisonment imposed on the petitioners herein by the trial Court, was enhanced to one year simple imprisonment, the petitioners have filed Crl.R.C. No.651 of 2020 along with the instant criminal miscellaneous petition seeking suspension of sentence and bail.

4 Heard Mr. D. Ashok Kumar, learned counsel for the petitioners/accused and Mr. Guruprasad, learned counsel for the complainant.

5 Mr. Ashok Kumar contended that the petitioners were not able to mobilise any money and that is exactly the reason why they surrendered on 29.01.2020 and since then, they have been in imprisonment. He further contended that the petitioners have already served half of their sentence and that one of them is suffering from cancer.

6 Per contra, Mr. Guruprasad submitted that Jameel Ahamed (A.2) has transferred his properties in favour of his wife and children in order to defeat the claims of his creditors and has quietly surrendered so as to strike a sympathy card for claiming bail.

7 This Court gave its anxious consideration to the rival submissions.

8 The contention of Mr. Ashok Kumar that the petitioners have served half of their sentence cannot be countenanced, because, the trial Court has not stated that the sentences in S.T.C. Nos.128,129 and 130 of 2018 should run concurrently, though the judgments in all the three cases were delivered on 22.01.2019. It is necessary to state here that the three complaints were filed by three different individuals to whom cheques of huge values were issued by the accused. Therefore, the trial Court and the appellate Court thought it fit that the sentences should not be directed to run concurrently.

9 Under Section 427(1) Cr.P.C., the normal rule in such cases is that the sentences should run consecutively, unless specially directed by the Court. In the event of this Court confirming the conviction and sentences passed by the Courts below, the petitioners will have to undergo sentences consecutively, unless ordered by this Court otherwise.

10 Though, at present, the petitioners are undergoing the sentence, in the first of the four cases, if their sentence is suspended in that case alone, they will not be released from custody, because, the sentence for the second case will start running, after the expiry of which, the sentence for the third and fourth cases also will start running consecutively. In fact, if this suspension of sentence and bail application is dismissed, the petitioners will have to undergo four years simple imprisonment as awarded, against which, they have now undergone only eight months imprisonment. Hence, this Court will have to perforce suspend the sentence and release the petitioners on bail in all the four cases, lest, no useful purpose should be served.

11 Mr. Guruprasad submitted that in the event of these petitioners being released on bail, they must be directed to produce appropriate immovable property as security, to ensure that the compensation amounts awarded by the Courts below, reach the complainants. This submission merits consideration because the complainant who has doggedly fought the legal battle cannot be left high and dry.

12 Since it is represented that one of the petitioners is suffering from cancer, on humanitarian grounds, this Court is inclined to suspend the sentence and release the petitioners on bail on the following conditions:

- i. the petitioners shall execute a bond for Rs.50,000/- each, with two sureties (one of whom shall be a blood relative), to the satisfaction of the trial Court;
- ii. the sureties shall affix their photographs and left thumb impression in the surety bonds and the trial Court may obtain a copy of their Aadhaar card or Bank pass Book to ensure their identity.
- iii. each of the petitioners shall, either by themselves or on their behalf, by someone else, furnish immovable property security valued at Rs.50 lakhs each, to the satisfaction of the trial Court; needless to say that such properties shall be free from encumbrance and shall not be alienated without the permission of the trial Court;
- iv. the petitioners shall report before the trial Court every Monday at 10.30 a.m. until further orders.
- v. if the petitioners abscond, a fresh FIR can be registered against them under Section 229-A IPC.

This petition for suspension of sentence and bail stands ordered accordingly.

-sd/-

17/09/2020

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 II ADDITIONAL DISTRICT AND
SESSIONS JUDGE, ERODE.

2 THE JUDICIAL MAGISTRATE,
(FAST TRACK COURT NO.I), ERODE.

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI, CHENNAI

C.C. to M/S.ASHOKKUMAR D. Advocate on payment of necessary charges

Order

in
CRL MP.4797/2020

in
CRL RC.651/2020

Date :17/09/2020

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RVR 17/09/2020