

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.8233 of 2020

in

CRL.R.C.No.1181 of 2020

1.The Lion Packer,
1/177, New No.311,
Sithar Kovil Main Road,
Sivathapuram, Salem.

2.Y.G.Vijaya Mahendra Petitioners

Vs.

R.Dhatchanamoorthis Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 397(1) of Criminal Procedure Code to suspend the sentence imposed in Crl.A.No.25 of 2019 dated 07.10.2020 on the file of the learned Principal District and Sessions Judge, Namakkal by confirming the order passed in S.T.C.No.156/2015 dated 06.07.2019 by the learned Judicial Magistrate, Tiruchengode and grant bail to the petitioner.

For Petitioner : Mr.B.Gopalakrishnan

O R D E R

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed in Crl.A.No.25 of 2019 dated 07.10.2020 on the file of the learned Principal District and Sessions Judge, Namakkal by confirming the order passed in S.T.C.No.156/2015 dated 06.07.2019 by the learned Judicial Magistrate, Tiruchengode and grant bail to the petitioner.

2. The case of the prosecution is that the petitioners are the Manufacturer of packing materials and the respondent/complainant is a Commission Agent, who used to purchase the papers from the Companies viz., Sri Navasakthi Paper and Board and Sri Velvan Paper and Boards, Sivadharshini Papers Private Limited. The petitioners had purchased papers through the respondent/complainant from the above said companies, due to which, the petitioner has to pay a sum of Rs.9,27,078/-. Out of which, the accused had paid a sum of Rs.1,45,636/- to the complainant. To settle the balance amount, the accused had received a sum of Rs.7,81,442/- from the complainant on 02.01.2014. Thereafter, in order to discharge the same, the petitioners had given two cheques for a sum of Rs.2,50,000/- drawn on

City Union Bank, Salem Branch, Cheque No.001022 dated 04.01.2014 and another one cheque for a sum of Rs.5,31,442/- drawn on City Union Bank, Salem Branch, Cheque No.001087 dated 20.01.2014 to the complainant. Hence, the complainant has presented the above cheques in his bank on 04.03.2014, but it was returned as "Funds insufficient" on 05.03.2014. Thereafter, the respondent had sent a legal notice on 12.04.2014 and it was received by the accused on 15.04.2014. But the accused had neither replied nor paid any amount. Hence, the complaint.

3. The learned counsel for the petitioners would submit that the respondent has filed a private complaint in S.T.C.No.156 of 2015 against the petitioner/accused for the offence under Section 138 of Negotiable Instrument Act, which was allowed by the Trial Court on 06.07.2015 and convicted the petitioner and sentenced to undergo one year simple imprisonment and also directed to pay a sum of Rs.7,81,422/- as compensation to the respondent herein within a period of one month under Section 357(3) of the Code of Criminal Procedure, in default, to undergo simple imprisonment for one month. Aggrieved against the same, the petitioners herein filed an appeal before the learned Principal District and Sessions Judge, Namakkal, which was dismissed by the learned Principal District Judge, Namakkal on 07.10.2020. Against which, the present petition has been filed. He would further submit that the respondent/complainant has not proved this case through documentary evidence or oral evidence that the cheque amount is legally enforceable debt. He would submit that for the same liability, M/s.Sivadharashini Papers Private Limited has filed case in C.C.No.363 of 2016. He would further submit that without prejudice to his contention, the petitioners are ready and shall deposit Rs.2,50,000/- (Rupees Two Lakh Fifty Thousand only).

4. In view of the above submission, this Court is inclined to suspend the sentence on condition that the petitioners are directed to deposit a sum of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand Only) to the credit of STC.No.156 of 2015 before the learned Judicial Magistrate, Tiruchengode on or before 12.01.2021 and on such deposit, the petitioners are directed to be enlarged on bail on condition to execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Tiruchengode within a period of 7 days from 12.01.2021 and on further condition that the petitioner shall appear before the said Court once in three months at 10.30 a.m. till the disposal of the revision. If the petitioner fails to deposit the amount of Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand Only) by 12.01.2021, the order would stand cancelled automatically.

-sd/-

16/12/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

TO

1 THE PRINCIPAL DISTRICT AND
SESSIONS JUDGE, NAMAKKAL.

2 THE JUDICIAL MAGISTRATE,
TIRUCHENGODE.

3 THE CHIEF JUDICIAL MAGISTRATE
NAMAKKAL [FOR INFORMATION]

+1 C.C. to M/S.B.GOPALAKRISHNAN Advocate on payment of necessary
charges SR.No.8334

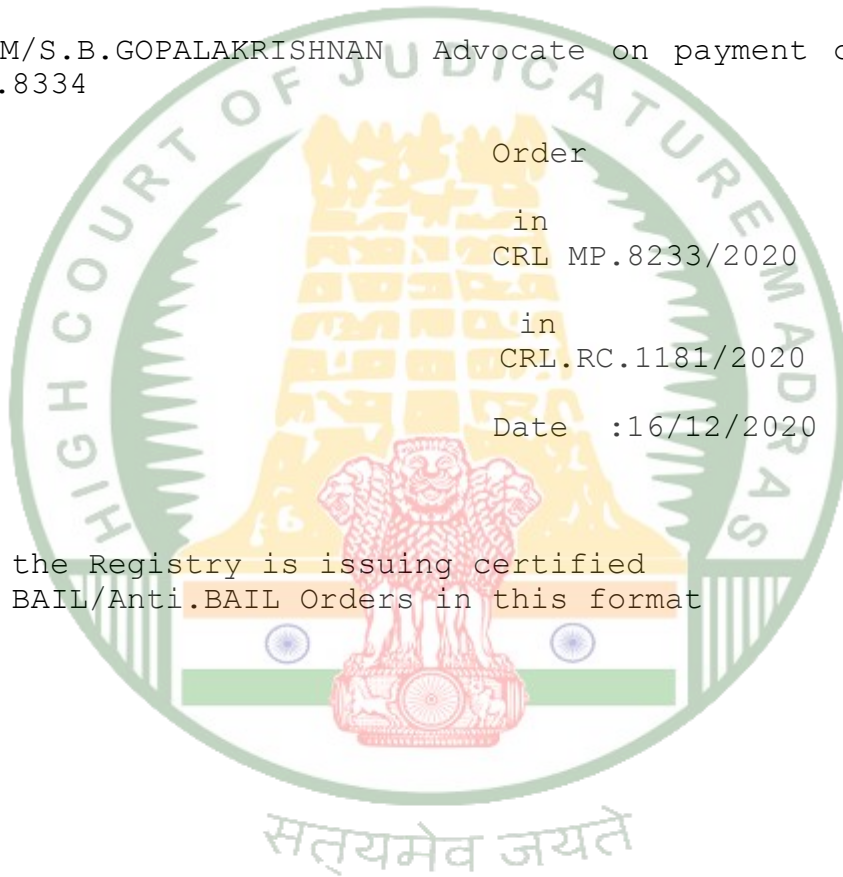
Order

in
CRL MP.8233/2020

in
CRL.RC.1181/2020

Date :16/12/2020

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