

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.M.P.No.8254 of 2020

in CRL.R.C.No.1191 of 2020

Yamuna Ramesh

... Petitioner

Vs.

Nalina Senthilkumar

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 397(1) of Criminal Procedure Code to suspend the sentence confirmed by the Principal District & Sessions Judge, Nammakkal in Crl.A.No.79 of 2019 dated 22.09.2020 , the judgment of the Judicial Magistrate, Paramathi by the Judgment in S.T.C.No.27 of 2018 dated 14.11.2019 enlarge the petitioner on bail pending disposal of the above revision.

For Petitioner : Mr.K.Sumathi

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence confirmed by the Principal District & Sessions Judge, Nammakkal in Crl.A.No.79 of 2019 dated 22.09.2020 , the judgment of the Judicial Magistrate, Paramathi by the Judgment in S.T.C.No.27 of 2018 dated 14.11.2019 and enlarge the petitioner on bail pending disposal of the above revision.

2. The case of the prosecution is that the defacto complainant executed a Power of Attorney before a Notary Public on 19.05.2010 at Rasipuram in favour of his cousin brother P.Arulmurugan. The complainant and the accused/petitioner are friends. Therefore, the accused invited the complainant to join with their business in the name and style as "Kleenwell Hygiene Pro" and "Kleenwell Kleaning Services" as partner, whereas, the complainant along with her brother P.Arulmurugan entered into partnerships on 22.04.2009 with accused and her husband M.Ramesh. Thereafter, the complainant paid a total sum of Rs.26,60,000/- on various dates towards loan and part of partnership share amount. Since the partnership did not materialise and there was no effective implementation of Partnership business as per partnership deeds dated 22.04.2009, the complainant and her brother Arulmurugan have not actively taken part in the affairs of the business. Therefore, the business of the firm shall be carried on by the accused/petitioner

herein as Proprietrix in the same name and style as Kleenwell Hygiene Pro, for which, other partners have no objection. The complainant contributed a sum of Rs.26,60,000/- to the accused towards loan, part amount for Partnership business in the name and style of Kleenwell Hygiene Pro and Kleenwell Kleaning Services. Since the partnership business did not materialise, the complainant, accused/petitioner and her husband, the complainant's cousin brother/P.Arulmurugan entered into Dissolution of Partnership deeds on 16.09.2009. At the time of execution of dissolution, the petitioner is indebted and liable to repay the received amount of Rs.26,60,000/- with interest totally to a tune of Rs.28,51,700/- to the complainant. Since she is not able to discharge the debt amount immediately, on 16.09.2009 itself the accused come forward and executed a Loan Agreement and also handed over four post dated cheques towards discharge of her liability. Thereafter, the complainant presented the two cheques bearing No.439964 & 439961 for Rs.10,60,000/- and Rs.1,19,700/- respectively for payment on 24.03.2010 and the same was returned with an endorsement "Exceeds Arrangement & Funds Insufficient". On 27.04.2010, the complainant sent a legal notice to the accused and the same was received by the accused on 29.04.2010. Thereafter, the accused had neither replied nor paid any amount. Hence, the complaint.

3. The learned counsel for the petitioner would submit that the respondent has filed a private complaint in S.T.C.No.27 of 2018 against the petitioner/accused for the offence under Section 138 of Negotiable Instrument Act, which was allowed by the Trial Court on 14.11.2019 and convicted the petitioner and sentenced to undergo one month simple imprisonment and also directed to pay a sum of Rs.11,79,700/- as compensation to the respondent herein. Aggrieved against the same, the petitioner herein filed an appeal before the learned Principal District and Sessions Court, Namakkal which was dismissed by the Lower Appellate Court on 22.09.2020. Against which, the present petition has been filed. He would further submit that the Lower Court as well as the Lower Appellate Court failed to consider the evidence in a proper and perceptive manner and gave a wrong finding and convicted the petitioner. He would further submit that the petitioner has already deposited a sum of Rs.2,35,940/- (Rupees Two Lakhs Thirty Five Thousand Nine Hundred Fourty Only) to the credit of S.T.C.No.27 of 2018. Therefore, without prejudice to his contention, the petitioner is ready and willing to deposit Rs.3,53,910/- (Rupees Three Lakhs Fifty Three Thousand Nine Hundred Ten only).

4. In view of the above submission, this Court is inclined to suspend the sentence on condition that the petitioner is directed to deposit a sum of Rs.3,53,910/- (Rupees Three Lakhs Fifty Three Thousand Nine Hundred Ten only) to the credit of S.T.C.No.27 of 2018 before the Judicial Magistrate, Paramathi, on or before 27.01.2021 and on such deposit, the petitioner is 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 Judicial Magistrate, Paramathi, within a period of 7 days from 27.01.2021 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.3,53,910/- (Rupees Three Lakhs Fifty Three Thousand Nine Hundred Ten only) by 27.01.2021, the order would stand cancelled automatically.

5. Accordingly, the Criminal Miscellaneous Petition stands ordered.

-sd/-
16/12/2020

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,
PARAMATHI.

2 THE CHIEF JUDICIAL MAGISTRATE
NAMAKKAL [FOR INFORMATION].

3 THE PRINCIPAL DISTRICT & SESSIONS JUDGE,
NAMAKKAL.

+1 C.C. to M/S. K.SUMATHI Advocate on payment of necessary charges SR NO 8262

Order

in
CRL MP.8254/2020
in
CRL RC 1191/2020

Date :16/12/2020

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