

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.M.P.No.8350 of 2020

in CRL.R.C.No.1198 of 2020

Subburathinam

.. Petitioner

/versus/

A.Govindaraju

.. Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 397(1) of Cr.P.C., praying to suspend the sentence passed against the petitioner in the judgment of the learned Judicial Magistrate, FTC-1 (Magisterial Level), Coimbatore dated 18.09.2017, in C.C.No.150 of 2016 and confirmed by the learned III Additional District and Sessions Judge, Coimbatore, by an order dated 25.06.2020 in C.A.No.332 of 2017, pending disposal of the above Revision.

For Petitioner : Mr.A.M.Rahamath Ali

O R D E R

The Criminal Miscellaneous Petition is filed to suspend the sentence imposed on the petitioner in judgment dated 18.09.2017 made in C.C.No.150 of 2016 by the Judicial Magistrate, FTC-1 (Magisterial Level), Coimbatore and confirmed by the learned III Additional District and Sessions Judge, Coimbatore, by an order dated 25.06.2020 in C.A.No.332 of 2017, enlarge her on bail, pending disposal of the above CrI.R.C.

2.The petitioner is an accused on a private complaint filed by the respondent for offence under Section 138 of the Negotiable Instrument Act in C.C.No.150 of 2016 on the file of the Judicial Magistrate, FTC-1 (Magisterial Level), Coimbatore.

3.The gist of the case is that the respondent/complainant lodged a complaint under Section 138 of the Negotiable Instrument Act, alleging that the respondent/complainant and the petitioner/accused known to each other. On 20.07.2015 the petitioner borrowed a sum of Rs.1,25,000/- from the respondent and issued a post-dated cheque dated 28.09.2015 for the said amount towards discharge of the loan. The respondent presented the cheque on 28.09.2015, which was returned with the endorsement "Payment stopped by drawer" on 29.09.2015. The respondent caused a lawyer's notice on 06.10.2015, which the petitioner received on 08.10.2015 but did not give any reply and has not taken any steps to repay the amount. Hence, the complaint was filed.

4.The learned counsel for the petitioner would submit that Trial Court as well as the Appellate Court failed to see that the sole witness examined by the prosecution was not cross examined by the defence and there is no way the accused could defend the case without cross examining the witness. The Courts below have failed to consider that the application under Section 311 Cr.P.C filed for recalling P.W.1 was dismissed by the Trial Court and the order was under challenge before this Court, in between the judgment was pronounced by the Trial Court. The Appellate Court erred in not considering the fact that a petition was pending in CrI.O.P.No.16776 of 2017 before this Court challenging the order of dismissal in the application filed under section 311 Cr.P.C. Hence he prays for grant of bail to the petitioner.

5.Considering the submission made by the learned counsel for the petitioner, this Court is inclined to suspend the sentence on condition that the petitioner is directed to deposit further sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) to the credit of C.C.No.150 of 2015 before the Judicial Magistrate, FTC-1 (Magisterial Level), Coimbatore on or before 10.01.2021 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, FTC-1 (Magisterial Level), Coimbatore within a period of 7 days from 10.01.2021 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.25,000/- (Rupees Twenty Five Thousand Only) by 10.01.2021, the order would stand cancelled automatically.

-sd/-

17/12/2020

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 III ADDITIONAL DISTRICT AND SESSIONS JUDGE,
COIMBATORE.

2 THE JUDICIAL MAGISTRATE
FTC-1, (MAGISTERIAL LEVEL),
COIMBATORE.

3 THE CHIEF JUDICIAL MAGISTRATE
COIMBATORE [FOR INFORMATION]

C.C. to M/S.H.RAJASEKAR Advocate on payment of necessary
charges

Order

in

CRL.MP.NO.8350/2020

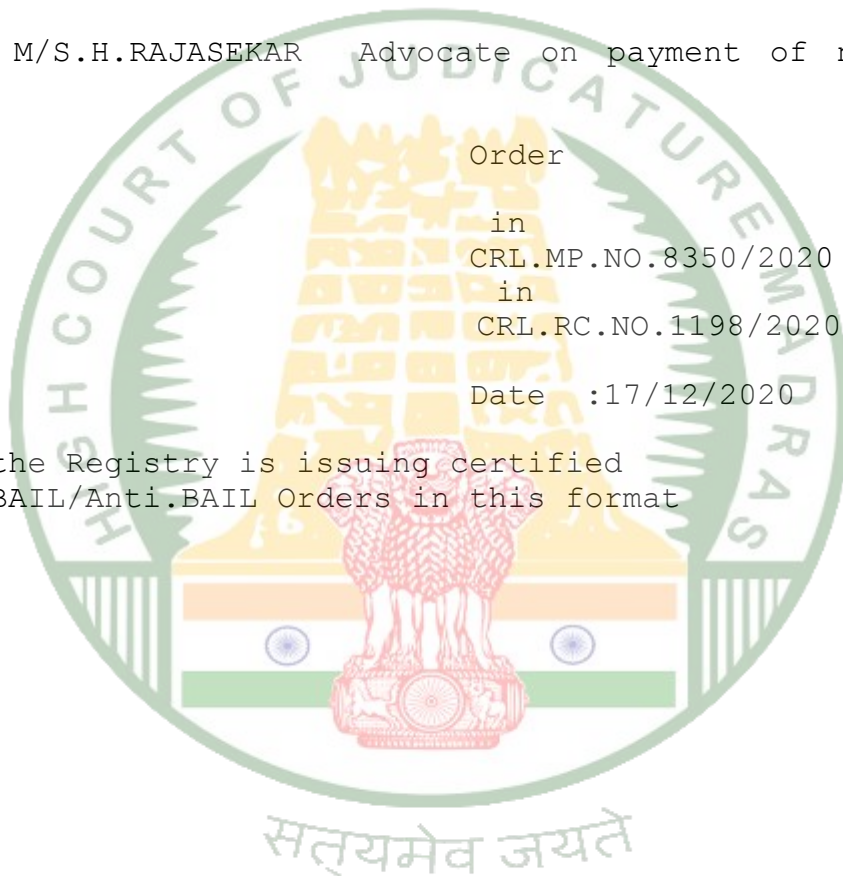
in

CRL.RC.NO.1198/2020

Date :17/12/2020

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

MK:31/12/2020



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