

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.8134 of 2020

in Crl.RC.No.1162 of 2020

Rajapandian

.. Petitioner

/versus/

G.Palani

.. Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(2) of Cr.P.C., praying to suspend the sentence imposed on the petitioner in Crl.A.No.35 of 2019 dated 29.07.2020 on the file of the passed by the learned II Additional District and Sessions Judge, Vellore at Ranipet confirming the order made in S.T.C.No.55 of 2016 dated 05.03.2019 on the file of the Judicial Magistrate No.II, Walajapet and grant bail to the petitioner.

For Petitioner : Mr.S.Sathish Rajan

O R D E R

The Criminal Miscellaneous Petition is filed to suspend the sentence imposed on the petitioner in judgment dated 29.07.2020 made in Crl.A.No.35 of 2019 on the file of the II Additional District and Sessions Judge, Vellore at Ranipet confirming the judgment of conviction dated 05.03.2019 made in S.T.C.No.55 of 2016 on the file of the Judicial Magistrate No.II, Walajapet and enlarge her on bail, pending disposal of the above Crl.R.C.

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2.The petitioner is an accused in a private complaint filed by the respondent for offence under Section 138 of the Negotiable Instrument Act in S.T.C.No.55 of 2016 on the file of the Judicial Magistrate No.II, Walajapet.

3.The learned counsel for the petitioner submitted that the petitioner is aged about 68 years. The petitioner and the respondent had some transactions and the petitioner repaid a sum of Rs.8,00,000/- to the respondent and the proof of the same has been produced which has been marked as Ex.D1. On 23.07.2015, the receipt/Ex.D1 is admitted by the respondent/complainant but the respondent gave an explanation that Ex.D1 is of different transaction. The amount of Rs.8,00,000/- received by the respondent and the petitioner is to pay the balance amount of Rs.6,49,000/-. The respondent filled up the blank cheque for a amount of Rs.9,72,000/- and presented for the collection and the same was dishonoured. Hence, the prosecution against the petitioner. He further submitted the respondent admitted in the cross examination that the loan lent to the petitioner was reflected in the Income Tax Returns. Therefore the petitioner requested the respondent to produced the income tax returns. The petitioner has also moved the petition before this Court in Crl.OP.No.2778 of 2019 and 2792 of 2019 in which this Court passed the following orders:

"This Court does not find any infirmity or illegality in the order passed by the Court below. The petitioner has made efforts to make the respondent produce the Income-Tax returns and bank statements. This was due to the fact that the respondent himself admitted in the cross-examination that the loan was reflected in these documents. If the respondent chooses not to produce those documents, the petitioner cannot compel this to produce those documents and it is left open to the Court to take adverse inference under Section 114(g) of the Indian Evidence Act, based on the appreciation of evidence."

4.He further submitted that the respondent has not produced income tax returns or any other proof to show that he had lent such a huge amount to the petitioner. He further contended that the Trial Court and the Lower Appellate Court despite the finding of this Court, have adverse inference and convicted the petitioner. Further the petitioner without prejudice to his rights willing to deposit a sum of Rs.3,50,000/- before the Trial Court.

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.3,50,000/- (Rupees Three Lakhs Fifty Thousand Only) to the credit of S.T.C.No.55 of 2016 before the learned Judicial Magistrate No.II, Walajapet at Ranipet on or before 19.01.2021 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 learned Judicial Magistrate No.II, Walajapet. within a period of 7 days from 19.01.2021 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.3,50,000/- (Rupees Three Lakhs Fifty Thousand Only) by 19.01.2021, the order would stand cancelled automatically.

-sd/-
21/12/2020

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 II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
VELLORE AT RANIPET.

2 THE JUDICIAL MAGISTRATE NO.II,
WALAJAPET.

3 THE CHIEF JUDICIAL MAGISTRATE
VELLORE [FOR INFORMATION]

+1C.C. to M/S.S.SATHISH RAJAN Advocate on payment of
necessary charges SR NO.8537

Order

in
CRL.MP.NO.8134/2020
in
CRL.RC.NO.1162/2020

Date :21/12/2020

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