

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.M.P.No.8653 of 2020

in CrI.R.C.No.1233 of 2020

C.Karthikeyan

... Petitioner

Versus

P.Aruna

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 397(1) r/w 439 of the Code of Criminal Procedure, to suspend the sentence passed in C.C.No.662 of 2017, on the file of the Judicial Magistrate, Sulur dated 18.09.2018 confirmed in C.A.No.448 of 2018, on the file of V Additional District and Sessions Judge, Coimbatore, dated 13.10.2020 pending disposal of the above Revision.

For Petitioner : Mr.C.Veerarahavan

ORDER

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed on the petitioner in C.A.No.448 of 2018, dated 13.10.2020, passed by the learned V Additional District and Sessions Judge, Coimbatore, confirming the judgment in C.C.No.662 of 2017, dated 18.09.2018 passed by the learned Judicial Magistrate, Sulur.

2.The conviction and sentence of the trial Court in C.C.No.662 of 2017 is that the petitioner to undergo one year Simple Imprisonment for offence under Section 138 of the Negotiable Instruments Act and to pay a fine of Rs.9,00,000/-, in default to under to three months Simple Imprisonment.

3.The case of the respondent is that the petitioner approached the respondent for hand loan of Rs.10,00,000/- for his business and the respondent agreed for the same. On 07.02.2013, the respondent lent a sum of Rs.5,00,000/- to the petitioner and the petitioner agreed to repay the amount with interest at the rate of 18% per annum and on the same day, the petitioner executed a promissory note for a sum of Rs.5,00,000/- to the complainant in the presence of witnesses. Hereafter, the respondent lent another hand loan of Rs.4,00,000/- to

the petitioner on 19.03.2013 by pledging his jewels. On repeated demand, the petitioner neither paid the loan amount nor any interest to the respondent. Thereafter, the petitioner issued a cheque for a sum of Rs.9,00,000/- in favour of the respondent bearing No.017395, dated 25.09.2015, drawn on Axis Bank Limited, Pollachi Branch for discharging his liability. Subsequently, the respondent presented the cheque for encashment through bank i.e., Karur Vysys Bank, Sulur Branch, Coimbatore on 26.11.2015 and the same was returned with an endorsement 'Account Closed' on 27.11.2015. The respondent issued the statutory notice to the petitioner on 01.12.2015 calling upon the petitioner to make the payment. In spite of the legal notice, the petitioner neither paid the loan amount nor any reply. Hence, he filed a complaint in C.C.No.662 of 2017 before the learned Judicial Magistrate, Sulur. During trial, on the side of the respondent 2 witnesses were examined and 9 documents were marked. On the side of the petitioner one witness was examined and no document was marked. After full-fledged trial, the trial Court convicted the petitioner as stated above, against which the petitioner preferred an appeal before the learned V Additional District and Sessions Judge, Coimbatore in C.A.No.448 of 2018, dated 13.10.2020. The learned V Additional District and Sessions Judge, Coimbatore, dismissed the appeal, confirming the judgment of the trial Court.

4.The learned counsel for the petitioner submitted that the respondent has not proved the financial transaction of Rs.9,00,000/- to the petitioner. There are vital contradictions in the evidence of PW.1 and PW.2. The Court below failed to see that no document was produced by the respondent during her cross examination to prove the alleged transaction. Further, the receipts filed by PW.1 under Exs.P7 to P9 are forged one. It is the admitted case of the respondent that she is doing tailoring work and his husband was earning sum of Rs.8,000/- per month and she is residing in rental house. Such person advancing the huge amount of Rs.9,00,000/- is not possible. It is the special case of the petitioner that the respondent is failed to prove there is a legally enforceable debt.

5.He further submitted that the Trial Court and the Lower Appellate Court have not gone into the evidence and materials proper and mechanically convicted the petitioner. Hence, he prayed for suspension of sentence.

6.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.4,50,000/- (Rupees Four Lakhs Fifty Thousand Only) to the credit of C.C.No.662 of 2017 before the learned Judicial Magistrate, Sulur on or before 19.02.2021 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, Sulur within a period of 7 days from 19.02.2021 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.4,50,000/- (Rupees Four Lakhs Fifty Thousand Only) by 19.02.2021, the order would stand cancelled automatically. Accordingly, this Criminal Original Petition is ordered.

-sd/-
23/12/2020

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 V ADDITIONAL DISTRICT AND
SESSIONS JUDGE, COIMBATORE.

2 THE JUDICIAL MAGISTRATE,
SULUR.

3 THE CHIEF JUDICIAL MAGISTRATE
COIMBATORE [FOR INFORMATION]

C.C. to M/S.C.VEERA RAGHAVAN Advocate on payment of necessary charges

Order

in
CRL MP.8653/2020

in
CRL.RC.1233/2020

Date :23/12/2020

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