



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Thursday, the Ninth day of September Two Thousand and Twenty One

PRESENT

The Hon`ble Mrs.Justice T.KRISHNAVALLI

CRL MP(MD) No.5237 of 2021
in
CRL RC(MD)No.359 of 2020

E. JERRY CARDOZA

... PETITIONER/RESPONDENT
/RESPONDENT

Vs

T. SOLOMON DURAI RAJ

... RESPONDENT/PETITIONER
/PETITIONER

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to to cancel the order of suspension of sentence and bail granted to the respondent vide order dated 15.06.2020 in Crl. M.P.(MD) No.3098 of 2020 in Crl.R.C(MD)No.359 of 2020.

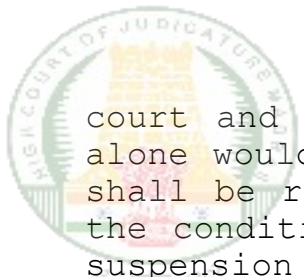
Prayer in CRL RC(MD) . 359/ 2020 :

to call for the records pertaining to the Reversal finding of the Judgment in Crl.A.No.37 of 2016 dated 02.08.2019 on the file of the 1st Additional District Sessions Court, Thoothukudi against the Judgment in C.C.No. 56 of 2013 dated 19.07.2016 on the file of the Special Court for land Grabbing Cases, Thoothukudi and set aside the same.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.N.DILIP KUMAR, Advocate for the petitioner and of MR.I.PINAYGASH, Advocate on behalf of the Respondent, the court made the following order:-

This Criminal Miscellaneous Petition is filed by the petitioner/Complainant to cancel the order of suspension of sentence and bail granted to the respondent, in Crl.MP(MD)No.3098 of 2020 in Crl.RC(MD)No.359 of 2020, dated 15.06.2020.

2.The learned counsel appearing for the petitioner/complainant submitted that the respondent/accused filed suspension of sentence petition and he was enlarged on bail on condition to deposit a sum of Rs.10,00,000/- within a period of six weeks before the lower



court and on such compliance, substantive sentence of imprisonment alone would stand suspended pending disposal of the revision and he shall be released on bail, but the respondent/accused did not obey the conditional order passed by this court and hence, the order of suspension of sentence shall be terminated and NBW may be issued. In support of his contention, he relied upon the decision of the Hon'ble Apex Court reported in **2020(2) SCC 514 (Surinder Singh Deswal A Colonel S.S Desawal and others Vs. Virneder Gandhi and another)** contending that it is for the appellate court, who has granted suspension of sentence to take call on on compliance and take appropriate decision and what order is to be passed by the appellate court in such circumstances is for the appellate court to consider and decide and non-compliance of the condition of suspension of sentence is sufficient to declare suspension of sentence as having been vacated and prays for cancellation of order of suspension and bail granted to the respondent/accused, dated 15.06.2020 in Crl.MP(MD)No.3098 of 2020 in Crl.RC(MD)No.359 of 2020.

3.It is submitted by the learned counsel appearing for the respondent/Accused that as the respondent is undergoing treatment for the ailment of cardiology for the past 21 years in Appollo Hospital at Chennai and Sundaram Arulraj Hospital at Thoothukudi District and due to Covid-19 Pandemic situation, the respondent/Accused could not able to mobile the amount within time and seeks eight weeks time to comply the order by depositing huge amount of Rs.10,00,000/- and hence, the cancellation bail petition filed by the petitioner has to be dismissed.

4.This court has carefully considered the rival contentions put forth on either side and also perused the materials available on record.

5.It is seen from the records that the substantive sentence of imprisonment against the respondent/accused was suspended and he was also enlarged on bail, by the order of this court, in Crl.MP(MD) No.3098 of 2020 in Crl.RC(MD)No.359 of 2020, dated 15.06.2020. While granting suspension of sentence, this court imposed a conditional order to the effect that the respondent/accused shall deposit a sum of Rs.10,00,000/- within a period of 6 weeks from the date of receipt of copy of this order before the trial court and on such deposit being made, the substantive sentence of imprisonment alone would stand suspended pending disposal of the revision and others conditions as imposed by this court as per the order, dated 15.06.2020. But without complying the conditional order, the respondent filed Crl.MP(MD)No.5490 of 2021 seeking extension of time to comply with the order in Crl.MP(MD)No.3098 of 2020 in Crl.RC (MD) No.359 of 2020, dated 15.06.2020. It is also seen from the records that the conditional order was passed on 15.06.2020. The respondent/accused filed a petition in Crl.MP(MD)No.5490 of 2021 in the month of August 2021 nearly 14 months after passing of the conditional order.



6.In 2020(2) SCC 514 (Surinder Singh Deswal A Colonel S.S Desawal and others Vs. Virneder Gandhi and another), the Hon'able Apex Court held that the court which has suspended in sentence on condition, after noticing non-compliance with that condition can very well hold that suspension of sentence stands vacated due to non-compliance. On coming to the instant case, the respondent/accused failed to comply with the conditional order passed by this court. Hence, this court is of the view that the order of suspension of sentence and the bail granted to the respondent/accused is liable to be cancelled.

7.In the result, this Criminal Miscellaneous Petition is **allowed** and the suspension of sentence and bail granted to the respondent/accused, on 15.06.2020 in Crl.MP(MD)No.3098 of 2020 in Crl.RC(MD)No.359 of 2020 is hereby cancelled.

sd/-
09/09/2021

/ TRUE COPY /

/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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Note:- In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but ensuring that the copy of the order that is presented is the correct copy shall be the responsibility of the advocate/litigant concerned.

TO

- 1 THE 1ST ADDITIONAL DISTRICT SESSIONS JUDGE,
THOOTHUKUDI
- 2 THE JUDICIAL MAGISTRATE NO.1,
TIRUNELVELI.
- 3 DO THROUGH,
THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI.

ORDER
IN
CRL MP(MD) No.5237 of 2021
IN
CRL RC(MD)No.359 of 2020
Date :09/09/2021

PKP/VR/SAR-4/30.09.2021/3P/4C