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CRL MP(MD)



22

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

Wednesday, the Twenty Seventh day of July Two Thousand and
Twenty Two
PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.6937 of 2022
IN
CRL RC(MD)No.510 of 2022

JOSEPH RAJ

... PETITIONER/PETITIONER

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
EOW-II, NAGERCOIL,
KANNIYAKUMARI.
CRIME.NO. 1 OF 2004

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the sentence imposed by the Learned Additional District and Sessions Judge (FTC), Kanniyakumari District at Nagercoil dated 30/09/2019 in Criminal Appeal No.53 of 2007 by confirming the judgment passed by the learned Chief Judicial Magistrate, Nagercoil in C.C.No.39 of 2004 dated 14.03.2007 and enlarge the petitioner on bail pending disposal of the main revision.

Prayer in CRL RC(MD). 510/ 2022 :

To call for records and allow this Criminal Revision and set aside the impugned Judgment passed by the Learned Additional District and Sessions Judge (FTC), Kanniyakumari District at Nagercoil dated 30/09/2019 in Criminal Appeal No.53 of 2007 by confirming the Judgment passed by the learned Chief Judicial Magistrate, Nagercoil in C.C.No.39 of 2004 dated 14.03.2007.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.DILIP KUMAR.N., Advocate for the petitioner and of Mr.S.MANIKANDAN, Government Advocate (crl.side) on behalf of the Respondent, the court made the following order:-

Reserved on : 25.07.2022

Delivered on : 27.07.2022

This petition has been filed to suspend the sentence imposed by the learned Chief Judicial Magistrate, Nagercoil, in C.C.No.39 of 2004, dated 14.03.2007, which was confirmed by the learned Additional District and Sessions Judge, (FTC), Kanyakumari District at Nagercoil, in C.A.No. 53 of 2007, dated 30.09.2019.



2. The case of the prosecution is that the accused is the Proprietor of M/s. VJR Bankers and he collected deposits from the public; that the accused had induced and enticed the public by making false promises such that the deposit made with his firm will carry higher rate of interest, that one Tmt.N.Suhasini Thambi, believing the words of the accused deposited Rs.2,00,000/-, for which, the accused gave a pass book No.592; that her daughter Padma had also deposited a sum of Rs.25,000/- on 03.04.2000 for which pass book No.608 was given; that the accused made a false promise to one Achuthan Nair and collected a sum of Rs.2,26,794/- and issued three pass books; that the accused collected Rs.1,00,025/- from one Malathi and Rs.1,00,000/- from one Govindaraja Perumal and that when the said depositors had demanded repayment of their amount, the accused refused to repay the same and that thereby, committed the offences. On the basis of the complaint lodged by the defacto complainant, FIR came to be registered in Crime No.1 of 2004 against the petitioner under Section 409 IPC and the respondent after completing the investigation, has laid the final report against the petitioner under Section 409 and 420 IPC and the case was taken on file in C.C.No.39 of 2004.

3. During trial, the prosecution has examined 7 witnesses as P.W.1 to P.W.7 and exhibited 11 documents as Ex.P.1 to Ex.P.11. The accused has examined himself as D.W.1 and adduced no documentary evidence.

4. The learned Chief Judicial Magistrate, upon considering the evidence adduced and on hearing the arguments of both the sides, has passed the judgment dated 14.03.2007, convicting the petitioner/accused under Section 420 IPC (4 counts) and sentenced him to undergo five years rigorous imprisonment for each count and to pay a fine of Rs.10,000/-, for each count, in default to undergo one year for rigorous imprisonment for each count and acquitted the petitioner for the offence under Section 409 IPC. Aggrieved by the said judgment of conviction and sentence, the accused has preferred the appeal in Crl.A.No.53 of 2007 and the learned Additional District and Sessions Judge, (FTC), Kanyakumari District at Nagercoil, vide judgment dated 30.09.2019, dismissed the appeal and thereby confirming the judgment of conviction and sentence passed by the learned Chief Judicial Magistrate and further directed the learned Chief Judicial Magistrate to take proceedings to secure the accused to undergo the remaining period of sentence. The accused, aggrieved by the dismissal of the criminal appeal, has come forward with the present revision.

5. It is not in dispute that NBW issued by the trial Court was executed and the petitioner was arrested on 25.02.2022 and he is now undergoing sentence till now.



6. The learned counsel appearing for the petitioner submitted that very manner of registration of the complaint is not believable; that the trial Court has failed to appreciate the contradictions in the prosecution evidences; that all the prosecution witnesses have stated that they gave the complaint separately several times, but no documents were produced to prove the same; that the prosecution has failed to prove that the petitioner had necessary intention to cheat the public so as to attract the offence under Section 420 IPC; that the witnesses examined by the prosecution are all relatives and known to each other and no independent witness was examined; that the Courts below failed to verify the veracity of the documents produced and failed to consider that there is inordinate delay in filing the complaint and that the evidence available on record would clearly prove that there was never any intention of cheating on the part of the petitioner warranting his conviction.

7. The learned Government Advocate (Criminal Side) appearing for the State submitted that the petitioner had run VJR bankers at Monday Market by using Pawn Broker and money lending license obtained in his name and collected deposits from four innocent persons to the tune of Rs.6,64,734/- and failed to refund the same; that the material evidences produced by the prosecution are sufficient enough to prove the charges against the petitioner; that the prosecution had collected the pass books from the depositors and produced the same before the trial Court and the trial Court had accepted the pass books and examined the depositors; that the delay of filing the complaint is not fatal for the prosecution as the reason for delay has been well explained; that the evidence adduced by the close relatives or interested witnesses should not be rejected on the ground of being a relative to the affected party and that since the petitioner had repaid the some interest amount for few months does not mean that he had no intention to cheat and it is the *modus operandi* of the petitioner to repay genuinely for few months, in order to win over the trust of the people and that the trial Court after considering the evidence on record, has rightly convicted the petitioner for the offence under Section 420 IPC and the same was confirmed by the Appellate Court.

8. The learned Government Advocate (Criminal Side) further submitted that no amount has been recovered till now; that NBW was pending against the petitioner for nearly three years after the dismissal of the appeal and that he was convicted for the offence under Section 420 IPC (4 counts).

9. Considering the above facts and circumstances and also the seriousness and gravity of the offence alleged and that the petitioner has been in incarceration from the date of judgment i.e., on 25.02.2022, this Court is not inclined to suspend the sentence imposed at this point of time.



10. Accordingly, the Criminal Miscellaneous Petition is dismissed.

sd/-

27/07/2022

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

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 ADDITIONAL DISTRICT & SESSIONS JUDGE (FTC),
KANNIYAKUMARI DISTRICT AT NAGERCOIL.
- 2 THE CHIEF JUDICIAL MAGISTRATE, NAGERCOIL.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, PALAYAMKOTTAI.
- 4 THE INSPECTOR OF POLICE
EOW-II, NAGERCOIL,
KANNIYAKUMARI.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER

IN

CRL MP (MD) No.6937 of 2022

IN

CRL RC (MD) No.510 of 2022

Date : 27/07/2022

SA/VR/SAR.3/28.07.2022/4P/6C