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Crl.R.C.Nos.1938, 1947 and 1948 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.12.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.Nos.1938, 1947 and 1948 of 2023

and

Crl.M.P.Nos.19889, 19886 and 19884 of 2023

Rajarathinam

... Petitioner/Accused in all Crl.R.Cs.

Vs.

Xavier

Proprietor of Rabeeth Advertising Agencies,

Rep. by its Manager/Power of Attorney Viji,

No.364/103, C.Narayanapillai Street,

Peramanur,

Salem – 636 007.

... Respondent in all Crl.R.Cs.

PRAYER in Crl.R.C.Nos.1938 & 1947 of 2023: Criminal Revision Cases have been filed under Sections 397 and 401 of Cr.P.C, praying to set aside the order dated 10.03.2021 passed in C.A.Nos.4 and 5 of 2019 on the file of learned III Additional District Judge, Salem, confirming the conviction and sentence of six months simple imprisonment along with compensation of the cheque amount of Rs.15,00,000/- to the respondent by an order dated 01.09.2018 passed in S.T.C.Nos.264 and 263 of 2016 on the file of the learned Judicial Magistrate No.II, Salem, by allowing these Criminal Revision Cases.



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WEB CRY PRAYER in Crl.R.C.No.1948 of 2023: Criminal Revision Case has been filed under Sections 397 and 401 of Cr.P.C, praying to set aside the order dated 22.03.2019 passed in C.A.No.124 of 2017 on the file of learned II Additional District and Sessions Judge, Salem, confirming the conviction and sentence in the judgment dated 23.10.2017 in S.T.C.Nos.265 of 2016, on the file of the learned Judicial Magistrate No.II, Salem.

For Petitioner : Mr.P.Babu

For Respondent : Ms.M.H.Anishia
for M/s.Elizabeth Ravi

COMMON ORDER

This Court, on 10.11.2023, had passed the following order:

“These Criminal Miscellaneous Petitions have been filed by the petitioner/accused, seeking suspension of sentence and bail pending disposal of the above revisions.

2.The petitioner was convicted for the offence under Section 138 of Negotiable Instruments Act in a complaint filed by the respondent. The respondent/complainant in all the three cases are one and the same. The respondent herein filed three cases against the petitioner before the learned Judicial Magistrate No.II, Salem in S.T.C.Nos.263, 265 and 264 of 2016, respectively. The cheque amount involved in three cases are Rs.5,00,000/-,



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Rs.5,00,000/- and Rs.15,00,000/-, in total Rs.25,00,000/-. The petitioner was convicted by the trial Court, against which, he preferred an appeal in C.A.Nos.5 of 2019, 124 of 2017 and 4 of 2019, respectively before the Sessions Court. The appeals got dismissed. Thereafter, the same has not been challenged by way of revision before this Court. Since the conviction of the petitioner confirmed, the respondent took steps to execute Non Bailable Warrant against the petitioner. In the meanwhile, the present revisions have been filed by the petitioner as stated above.

3.Learned counsel for the petitioner submitted that the petitioner settled the cheque amount of Rs.25,00,000/- (Rupees Twenty Five lakhs only) to the respondent pertaining to all the three cases. Learned counsel for the respondent is present before this Court and confirms the same. It is also submitted that the petitioner is a heart patient and underwent open heart surgery during January 2023 and he is under constant medical observation and medication. He further submitted that pursuant to the remand of the petitioner in all the cases on 30.10.2023, he is now confined in Central Prison, Coimbatore. Now the issue has been settled between the petitioner and the respondent.

4.Learned counsel for the respondent submits that the respondent is in Salem and seeks small accommodation to file a



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petition under Section 147 of N.I. Act to compound the offence.

5.Both the counsels agree to file a compound petition before this Court, which has been recorded in the remand order. A scanned reproduction of the same is as follows:

IN THE COURT OF JUDICIAL
MAGISTRATE No.11, SALEM

Present: I.Didmesh Kumaran
S.A.S.J. (Bench)
Judicial Magistrate No.11, Salem

On Monday, the 30th day of October,
2023

Accused/Convict: Rajarathnam
S/o. Rajappa Gounder
Summary Trial Case Nos.
263 of 2016, 264 of 2016 and 265 of 2016

ORDER

The accused, Rajarathnam S/o. Rajappa Gounder was produced before me on 30.10.2023 at 06:30 PM in Court upon execution of 3 Non-Bailable Warrants issued in D.No. 2808/2022, 2099/2022 and 2100/2022 dated 28.12.2022. Grounds of arrest known to accused. Accused stated he has means to engage Advocate, Section 54, Cr.P.C., 1973 complied with. Accused's family intimated of his arrest.

The accused has suffered conviction for the offence u/s. 138 of Negotiable Instruments Act, 1881 in STC.No. 263 of 2016, 264 of 2016 and 265 of 2016 on the file of this Court. In each case, the accused was sentenced to undergo Simple Imprisonment for a term of 6 (Six) months separately. The accused was also directed to pay compensation in each case. The conviction and sentence against the accused was subsequently confirmed by the Hon'ble 2nd and 3rd Additional District Judges, Salem.

Since, the accused did not move the application following the judgment at the Appellate Court, this Court upon petition by the complainant issued Non Bailable Warrants against the accused to secure his presence before this Court to execute the sentence against him.

When the accused was produced before me today, the accused submitted that he underwent an Open Heart Surgery in the month of January, 2023 and hence, his health is not conducive to be lodged in the prison. The accused also made a petition in this respect. At the same time, the Learned counsel for the complainant, Mr. S. Mohan, Advocate was also present before the Court along with the complainant. He submitted to the Court that the entire cheque amount has been realized from the accused. An affidavit was filed to this effect by the complainant.

Although, Rajarathnam stated that he is not in a fit physical condition to be lodged in the prison, the Medical Examination Report obtained from the

14 OCT 2023
SALEM

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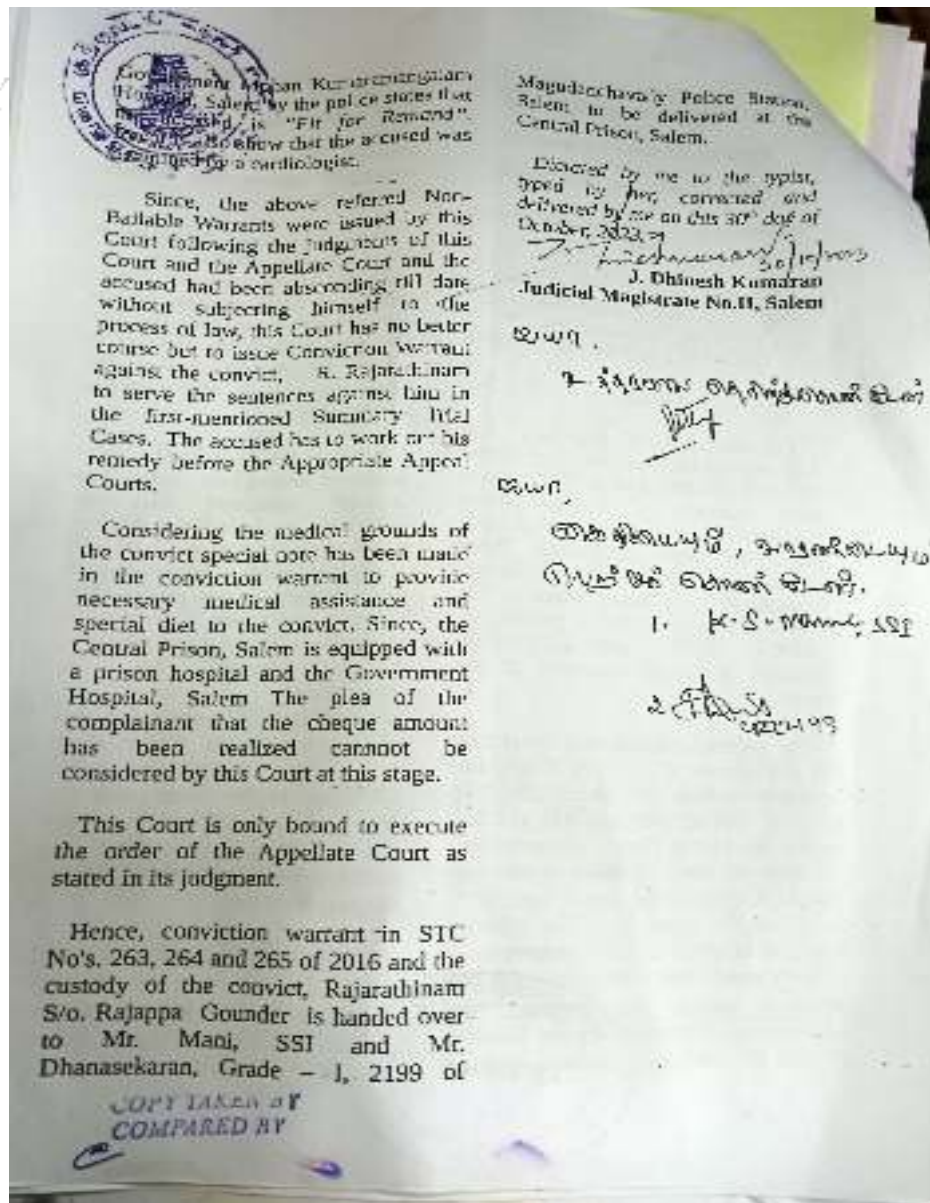
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6. In view of the settlement arrived at between the petitioner/accused and the respondent/complainant, this Court is inclined to suspend the sentence imposed on the petitioner. Learned counsel for the respondent has got no objection in granting bail to the petitioner.



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7. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the revision. The petitioner is directed to execute own bond for a sum of Rs.5,000/- (Rupees Five thousand only) before the Superintendent of Prison, Central Prison, Coimbatore and the petitioner is ordered to be released on execution of own bond.

8. Accordingly, these Criminal Miscellaneous Petitions are ordered.

9. Post the revision petitions on 20.11.2023 for filing petition under Section 147 of NI Act for compounding the offence.”

2. In continuation and conjunction to the earlier order passed by this Court on 10.11.2023, the learned counsel for petitioner as well as respondent are present. The petitioner is also present before this Court. Both the parties confirmed the compromise and now the entire amount has been settled to the satisfaction. Both the parties have filed a compounding petitions along with Joint Compromise Memo signed by the petitioner, respondent and their respective counsel and the affidavit of both petitioner and respondent before this Court in Crl.M.P.Nos.19889, 19886 and 19884 of 2023 in



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Crl.R.C.Nos.1938, 1947 and 1948 of 2023 invoking Section 147 of the Negotiable Instruments Act, 1881 to compound the offence and the same are ordered.

3.In the result, the cases between the petitioner and the respondent are compounded. Hence, the judgment, dated 01.09.2018 and 23.10.2017 in S.T.C.Nos.264, 263 and 265 of 2016, passed by the learned Judicial Magistrate No.II, Salem and the judgment dated 10.03.2021 and 22.03.2019 passed in C.A.Nos.4, 5 of 2019 and 124 of 2017 by the learned III Additional District Judge, Salem and II Additional District & Sessions Judge, Salem, respectively, are set aside and the revisions are, accordingly, allowed. The petitioner is acquitted of all the charges levelled against him.

22.12.2023

Index : Yes/No

Speaking order / Non-speaking order

Neutral citation : Yes/No

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M.NIRMAL KUMAR, J.

rsi

To

- 1.The Judicial Magistrate No.II,
Salem.
- 2.The III Additional District Judge,
Salem.
- 3.The II Additional District & Sessions Judge,
Salem.
- 4.The Public Prosecutor,
High Court, Madras.

Crl.R.C.Nos.1938, 1947 and 1948 of 2023
and
Crl.M.P.Nos.19889, 19886 and 19884 of 2023

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