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*Crl.M.P.Nos.18124, 18125 & 18078 of 2023
in Crl.R.C.Nos.1947, 1948 & 1938 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2023

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.Nos.18124, 18125 & 18078 of 2023
in
Crl.R.C.Nos.1947, 1948 & 1938 of 2023

Rajarithinam
S/o.Rajappa Gounder

... Petitioner in all Crl.M.Ps.

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.M.Ps.

PRAYER in Crl.M.P.No.18124 of 2023: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence of imprisonment imposed by an order dated 01.09.2018 passed in S.T.C.No.263 of 2016, on the file of the Judicial Magistrate No.II, Salem by convicting the petitioner six months simple imprisonment as confirmed by an order dated 10.03.2021 passed in C.A.No.5 of 2019, on the file of III Additional District Judge, Salem and enlarge the petitioner on bail, pending disposal of the above Criminal Revision Case.



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PRAYER in Crl.M.P.No.18125 of 2023: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence of imprisonment imposed in the judgment dated 22.03.2019 in Crl.A.No.124 of 2017 on the file of II Additional District and Sessions Judge of Salem confirming the judgment dated 23.10.2017 made in S.T.C.No.265 of 2016, on the file of the Judicial Magistrate No.II, Salem and enlarge the petitioner on bail, pending disposal of the above Criminal Revision Case.

PRAYER in Crl.M.P.No.18078 of 2023: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence imposed by an order dated 01.09.2018 passed in S.T.C.No.264 of 2016, on the file of the Judicial Magistrate No.II, Salem by convicting the petitioner six months simple imprisonment as confirmed by an order dated 10.03.2021 passed in C.A.No.4 of 2019, on the file of III Additional District Judge, Salem and enlarge the petitioner on bail, pending disposal of the above Criminal Revision Case.

For Petitioner : Mr.P.Babu
in all Crl.M.Ps.

For Respondent : Ms.M.H.Anushia
in all Crl.M.Ps. for M/s.Elizabeth Ravi

COMMON ORDER

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

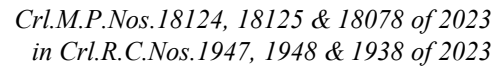


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2.The petitioner was convicted for the offence under Section 138 of Negotiable Instruments Act in a complaint filed by the respondent. The respondent/complainant in all the three cases are one and the same. The respondent herein filed three cases against 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/-, 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



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



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IN THE COURT OF JUDICIAL
MAGISTRATE No.11, SALEM

Present: J.Dhinesh Kumar
B.A., B.L., (Hons.)
Judicial Magistrate No.11, Salem

On Monday, the 30th day of October,
2023

Accused/Convict: Rajarathnam
S/o. Rajappa Gounder
Summary Trial Case Nos.:
203/2016, 204/2016 and 265/2016

ORDER

The accused, Rajarathnam S/o. Rajappagounder 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. 2038/2022, 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 the sentence against the accused was subsequently confirmed by the Hon'ble 2nd and 3rd Additional District Court.

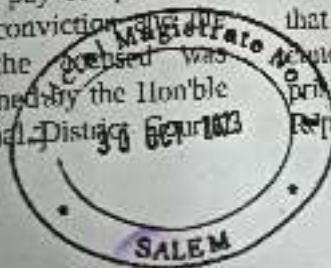
Salem in Criminal Appeal Nos. 124 of 2017, 4 of 2019 and 5 of 2019 respectively. Thereafter no appeal was preferred by the accused. Hence, the sentence and conviction against the accused became absolute.

Since, the accused did not save the sentences imposing the judgment of 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



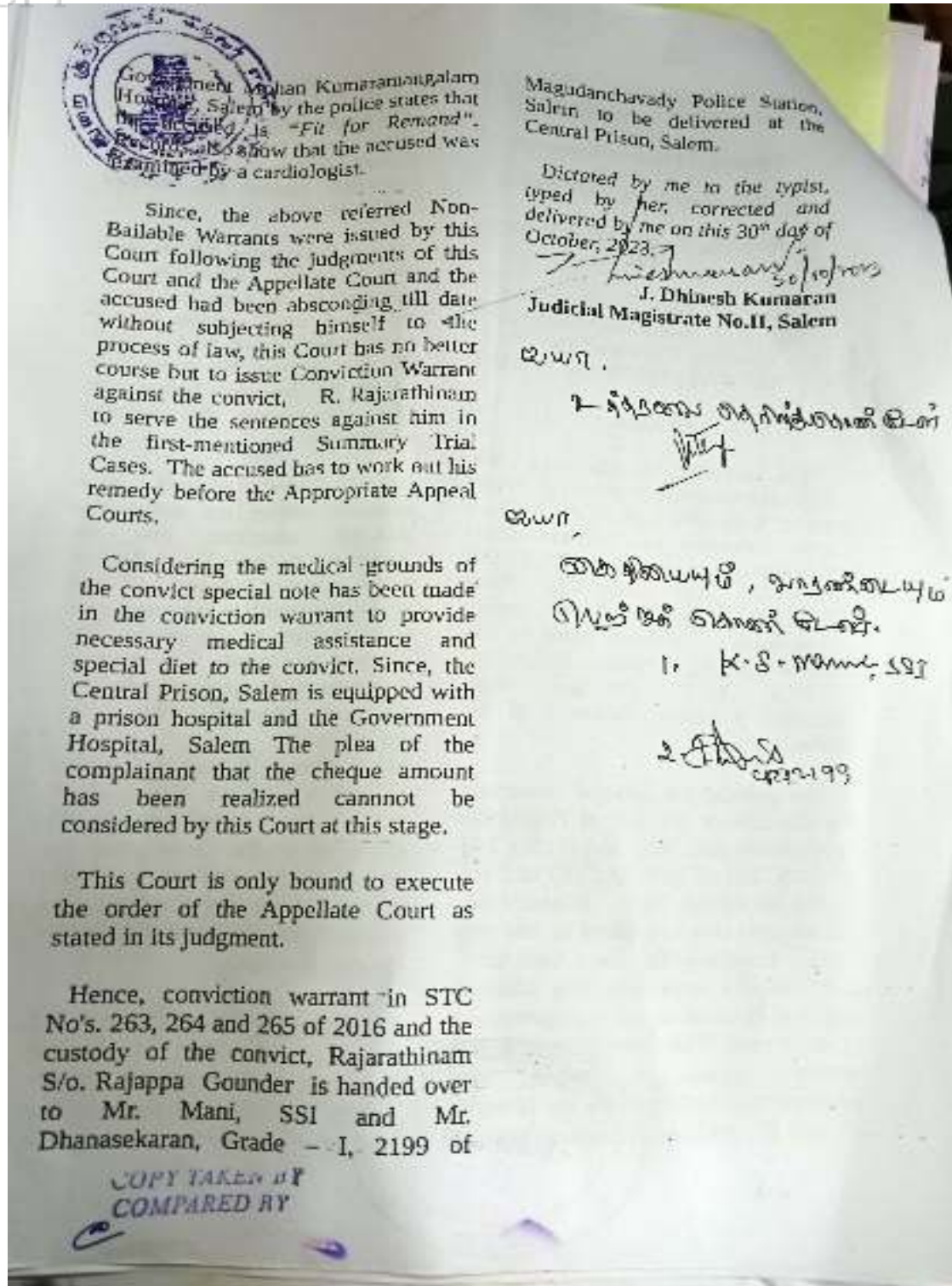
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30/10/2023



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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.

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.

10.11.2023
(3/3)

rsi

Note: Issue order copy on 10.11.2023.



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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 and Sessions Judge,
Salem.
- 4.The Superintendent of Prison,
Central Prison, Coimbatore.
- 5.The Public Prosecutor,
High Court, Madras.

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**10.11.2023
(3/3)**