



WEB COPY



*Crl.M.P.No.16485 of 2023
in Crl.RC.No.1723 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.10.2023

CORAM:

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

Crl.M.P.No.16485 of 2023
in
Crl.RC.No.1723 of 2023

M.Kalisamy

... Petitioner/Accused

Vs.

M.A.Lourduraj [Died]

L.Premela

[As per C.M.P.No.4138/2023
dated 04.12.2021]

... Respondent/Complainant

PRAYER: Criminal Miscellaneous Petition has been filed under Section 371(1) r/w. 389(1) of Cr.P.C to suspend the sentence imposed in C.C.No.160 of 2012 dated 24.01.2023 on the file of the learned III Additional District and Sessions Judge, Coimbatore confirming the sentence imposed in the judgment dated 15.05.2012 in C.C.No.259 of 2011 on the file of the Judicial Magistrate, Fast Track Court at Magistrate Level-II, Coimbatore pending disposal of the above revision.

For Petitioner : Mr.R.Nalliyappan



WEB COPY



*Crl.M.P.No.16485 of 2023
in Crl.RC.No.1723 of 2023*

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner/accused, seeking suspension of sentence of imprisonment imposed by the learned Judicial Magistrate, Fast Track Court at Magistrate Level-II, Coimbatore by order dated 15.05.2012 made in C.C.No.259 of 2011 which was confirmed by the learned III Additional District and Sessions Judge, Coimbatore in C.A.No.160 of 2012 dated 24.01.2023 and enlarge the petitioner on bail pending disposal of the above revision.

2.The petitioner/accused in C.C.No.259 of 2011 was convicted by the learned Judicial Magistrate, Fast Track Court at Magistrate Level-II, Coimbatore dated 15.05.2012 for the offence under Section 138 of the Negotiable Instruments Act, 1881, sentencing him to undergo six months simple imprisonment and to pay a fine of Rs.2,000/-, in default to undergo two months simple imprisonment. Aggrieved against the same, the petitioner preferred an appeal in C.A.No.160 of 2012. The learned III Additional District and Sessions Judge, Coimbatore, by judgment dated



*Crl.M.P.No.16485 of 2023
in Crl.RC.No.1723 of 2023*

24.01.2023 dismissed the appeal filed by the petitioner/accused by confirming the conviction and sentence imposed by the Trial Court.

Against which, the present revision petition is filed.

3.The gist of the case is that the petitioner borrowed a sum of Rs.1,50,000/- with interest of Rs.2,600/- per month from the respondent/complainant. But from the date of borrowal itself, the petitioner had not paid any interest. When the respondent approached the petitioner for return of money, the petitioner issued two post dated cheques for Rs.80,000/- and Rs.75,200/- respectively to discharge his entire loan of Rs.1,50,000/- along with interest of Rs.5,200/-. But when the cheques were presented for encashment, the same were returned with an endorsement “Insufficient Funds”. Hence, the respondent preferred a complaint.

4.The learned counsel appearing for the petitioner submitted that when the petitioner was arrested on 30.08.2023 on the strength of Non-Bailable Warrant issued in the above case, the petitioner's son arrived at a compromise with the respondent/complainant for a sum of Rs.3,00,000/-.



*Crl.M.P.No.16485 of 2023
in Crl.RC.No.1723 of 2023*

He would submit that the petitioner's son initially paid a sum of Rs.1,50,000/- by way of cheque and the balance amount of Rs.1,50,000/- in cash. The cheque has been encashed and the statement of account has been produced today. Further, the petitioner had taken notice to the respondent/complainant which is awaiting service. He further submitted that the petitioner is in prison from 30.08.2023 and now a sum of Rs.3,00,000/- which is twice the cheque amount, has been paid to the respondent/complainant. Hence, he prays for suspension of sentence.

5.Considering the submissions and on perusal of the materials, it is seen that the petitioner's son had already paid a sum Rs.3,00,000/- to the respondent/complainant, proof of payment of the amount has been produced and the Power of Attorney of the respondent/complainant viz., Mr.Venugopal has given a receipt confirming the same, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the revision petition.



*Crl.M.P.No.16485 of 2023
in Crl.RC.No.1723 of 2023*

6. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the revision and the petitioner is ordered to be enlarged on bail, on condition that he shall execute own bond for a sum of Rs.5,000/- (Rupees Five thousand only) before the Superintendent, Central Prison, Coimbatore.

7. Accordingly, this Miscellaneous Petition is ordered. Post the main revision petition on 17.11.2023.

12.10.2023

hvk

Note: Issue order copy on 13.10.2023



*Crl.M.P.No.16485 of 2023
in Crl.RC.No.1723 of 2023*

M. NIRMAL KUMAR, J.

hvk

To

- 1.The III Additional District and Sessions Judge,
Coimbatore.
- 2.The Judicial Magistrate,
Fast Track Court at Magistrate Level-II,
Coimbatore.
- 3.The Superintendent, Central Prison,
Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.

**Crl.M.P.No.16485 of 2023
in
Crl.RC.No.1723 of 2023**

12.10.2023