



*Crl.M.P.No.17388 of 2023
in Crl.RC.No.1843 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM:

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

Crl.M.P.No.17388 of 2023
in
Crl.RC.No.1843 of 2023

R.Sridhar

... Petitioner

Vs.

State rep. by
The Inspector of Police,
K3 Aminjikarai Police Station,
Chennai – 600 029.
Crime No.1142 of 2012.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence imposed by the learned I Additional Sessions Judge, City Civil Court, Chennai made in C.A.No.16/2022 by its judgment dated 20.10.2023, confirming the conviction and sentence imposed against the petitioner in judgment made in C.C.No.1432 of 2013 on the file of the learned V Metropolitan Magistrate, Egmore, Chennai by its judgment dated 10.01.2022 and enlarge the petitioner on bail till disposal of the appeal.



WEB COPY



*Crl.M.P.No.17388 of 2023
in Crl.RC.No.1843 of 2023*

For Petitioner : Mr.C.D.Johnson

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned I Additional Sessions Judge, City Civil Court, Chennai made in C.A.No.16/2022 by judgment dated 20.10.2023, confirming the conviction and sentence imposed by the learned V Metropolitan Magistrate, Egmore, Chennai in C.C.No.1432 of 2013 by judgment dated 10.01.2022 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused in C.C.No.1432 of 2013 was convicted by the Trial Court and sentenced to undergo three years simple imprisonment for the offence under Section 408 IPC and to pay a fine of Rs.500/-, in default, to under one month simple imprisonment, to undergo three years simple imprisonment for the offence under Section 468 IPC and to pay a



*Crl.M.P.No.17388 of 2023
in Crl.RC.No.1843 of 2023*

fine of Rs.500/-, in default, to under one month simple imprisonment, to undergo one year simple imprisonment for the offence under Section 471 IPC and to undergo three years simple imprisonment for the offence under Section 477 IPC. Aggrieved against the same, the petitioner preferred an appeal before the learned I Additional Sessions Judge, City Civil Court, Chennai in C.A.No.16/2022. The Lower Appellate Court dismissed the said appeal by confirming the judgment of the Trial Court. Against which the present revision petition is filed along with a petition to suspend the sentence.

3.The gist of the case is that the petitioner was working as Cashier in Bilroth Hospital and his duty is to collect cash from outpatients who avail CT Scan service, he was working during night time and have access to the computer in which the morning shift cashier also worked. The petitioner had fraudulently cancelled the bill as if services were not availed by the concerned person and prepared vouchers, signed the same as if money was refunded to the patients and thereafter, the petitioner/accused used to swindle the amount shown as refunded without actually refunding the same.



*Crl.M.P.No.17388 of 2023
in Crl.RC.No.1843 of 2023*

Thus, during the period 09.08.2011 to 22.06.2012, a sum of Rs.23,78,810/- had been misappropriated by the petitioner.

4.Before the Trial Court, on the side of the prosecution P.W.1 to P.W.6 were examined and Ex.P1 to Ex.P5 were marked. On the side of the petitioner/accused, no witness was examined and no documents were marked. On conclusion of the trial, the Trial Court convicted the petitioner as stated above. The Lower Appellate Court confirmed the judgment of the Trial Court.

5.The contention of the learned counsel for the petitioner is that the entire case revolves around the allegation of tampering and manipulation of bills that were cancelled and using these bills, the amount has been misappropriated. He would submit that the prosecution in this case had failed to prove the same by adducing evidence and documents. Further, in this case the only patient examined is P.W.5 to prove that she had not received the refunded amount. Ex.P3/excel sheet containing 560 names of patients, their bill number, date, time, Inpatient number and bill amount was



*Crl.M.P.No.17388 of 2023
in Crl.RC.No.1843 of 2023*

produced to show that Rs.23,78,810/- has been misappropriated by the petitioner. None of the patients shown therein except P.W.5 have been examined. He further submitted that Ex.P3 which was marked through P.W.2/Cashier of Bilroth Hospital is a computer generated printout without any authorization. The petitioner though objected the same and also questioned that the same is an inadmissible evidence in view of law of certificate under Section 65(b) of the Evidence Act and none of the witnesses have authorized the veracity of the same, the Trial Court as well as the Lower Appellate Court heavily relied upon this document in convicting the petitioner. He further submitted that the Trial Court on its own notion had submitted that on going through the bills and vouchers it was found that there have been discrepancies and forgery has been committed. In this case none of the documents have been forwarded to the Forensic expert and no specimen signature of the petitioner was obtained. The Apex Court had time and again held that under Section 73 of the Evidence Act the Trial Judge on its own can come to the conclusion but it is always safe to send the document for Handwriting expert and to adduce evidence in this regard. But in this case, no such evidence available.



*Crl.M.P.No.17388 of 2023
in Crl.RC.No.1843 of 2023*

WEB COPY

6.Learned counsel for the petitioner further submitted that the primary requirement to convict a person for misappropriation is that entrustment has to be made. In this case there is no evidence to show that the petitioner was entrusted with any amount and only after proving entrustment, the commission of misappropriation would arise. These factors have not been considered by both the Courts below. He further submitted that it is an admitted fact that there are around 11 Cashiers who are working and using the computer at the relevant point of time and except two of them has been examined as witnesses, none of others were examined and no explanation has been given that the computer was in exclusive use of the petitioner. He would further submit that the lower appellate court had given a finding that the petitioner had used the computer and committed forgery by entering wrong particulars but there is no evidence to the same. Hence, he prayed that the finding of the Trial Court as well as the Lower Appellate Court to be set aside.

7.Learned Additional Public Prosecutor submits that the defacto complainant is a reputed hospital who is catering to the needs of the



*Crl.M.P.No.17388 of 2023
in Crl.RC.No.1843 of 2023*

patients. It is not in dispute that the petitioner is employed as Cashier in defacto complainant's Hospital. He would submit that the petitioner claiming that he is a student sought for night shift and he was in exclusive use of the computer during night hours. He would further submit that during the day time, other Cashiers were employed and the petitioner taking advantage of the loneliness and exclusive use of the computer used to scroll upon the entries made during the day time, thereafter create entries as though amount received for Scan service was refunded to the patients as the service was not availed and the Doctor also advised that no scan report is required. This fact has been proved by the Auditor who had done thorough verification of the accounts and thereafter Ex.P2 and Ex.P3, Audit report and excel sheet have been produced. This has been corroborated by the other Cashiers, viz., P.W.3 and P.W.4. P.W.5 is the patient who confirms that she had not received the refund amount but the same is found in Ex.P3 as though she had been refunded. He further submitted that non-sending of documents to the Handwriting Expert is not required in this case and the Trial Judge had satisfied that tampering of documents and forgery has been committed since it is available on the face of it. The Trial Court as well as



*Crl.M.P.No.17388 of 2023
in Crl.RC.No.1843 of 2023*

the Lower Appellate Court had rightly convicted the petitioner. Hence, he strongly opposed this petition.

8.Considering the submissions made and on perusal of the materials, it is seen that 560 patients have been cheated and a sum of Rs.23,78,810/- has been misappropriated by the petitioner which is evidenced through Ex.P3. The Lower Appellate Court had only looked into five instances in Ex.P2 and with regard to other, there is no answer. Further, the discrepancies found by the Trial Court in Ex.P2 series have not been detailed. Since Ex.P3 is a computer generated printout and without any authorization, its admissibility is questionable. It is also seen apart from the petitioner, there have been other Cashiers and except one, none of them have been examined. In view of the same, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the revision.

9.Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the revision and the petitioner



*Crl.M.P.No.17388 of 2023
in Crl.RC.No.1843 of 2023*

is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the V Metropolitan Magistrate, Egmore, Chennai.

10.Further, the petitioner shall appear before the Trial Court once in three months at 10.30 a.m. until the disposal of the revision and if he is not able to appear before the Trial Court on that day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the Trial Court on any other day in lieu of the date of his absence as directed by the Trial Court.

11.Accordingly, this Miscellaneous Petition is ordered.

06.11.2023

cse

Note: Issue order copy on 07.11.2023.



WEB COPY



*Crl.M.P.No.17388 of 2023
in Crl.RC.No.1843 of 2023*

To

- 1.The Inspector of Police,
K3 Aminjikarai Police Station,
Chennai – 600 029.
- 2.The I Additional Sessions Judge,
City Civil Court, Chennai.
- 3.The V Metropolitan Magistrate,
Egmore, Chennai
- 4.The Superintendent,
Central Prison, Puzhal-I,
Chennai.
- 5.The Public Prosecutor,
High Court, Madras.



WEB COPY



*Crl.M.P.No.17388 of 2023
in Crl.RC.No.1843 of 2023*

M. NIRMAL KUMAR, J.

cse

**Crl.M.P.No.17388 of 2023
in
Crl.RC.No.1843 of 2023**

06.11.2023