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*Crl.M.P.No.18058 of 2023
in Crl.R.C.No.1933 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.11.2023

CORAM:

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

Crl.M.P.No.18058 of 2023
in
Crl.R.C.No.1933 of 2023

V.Selvaraj

... Petitioner/Accused

Vs.

The State through
The Inspector of Police,
Central Crime Branch,
Tiruppur.
Crime No.14/2017.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 397 r/w 401 of Criminal Procedure Code to suspend the sentence of imprisonment imposed on the petitioner in the judgment dated 30.10.2023 made in Crl.A.No.111 of 2018 on the file of II Additional District and Sessions Judge, Tiruppur, confirming the conviction and sentence imposed by the Trial Court in judgement dated 11.10.2018 made in C.C.No.57 of 2017 on the file of the Chief Judicial Magistrate, Tiruppur and release the petitioner on bail pending disposal of the above revision.

For Petitioner : Mr.R.Prabakar

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

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This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Chief Judicial Magistrate, Tiruppur by judgment dated 11.10.2018 made in C.C.No.57 of 2017 and confirmed by the learned II Additional District and Sessions Judge, Tiruppur in C.A.No.111 of 2018 dated 30.10.2023 and enlarge the petitioner on bail pending disposal of the above revision.

2. The petitioner/accused in C.C.No.57 of 2017 was convicted by the Trial Court by judgment dated 11.10.2018 for offences under Sections 3 and 4 of Price Chit and Money Circulation Scheme (Banning) Act, 1978 and sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.5,000/-. Aggrieved against the same, the petitioner preferred an appeal before the II Additional District and Sessions Judge, Tiruppur in C.A.No.111 of 2018. The learned Sessions Judge, by judgment dated 30.10.2023 dismissed the appeal confirming the conviction and sentence passed by the trial Court, against which, the petitioner/accused has filed Crl.R.C.No.1933 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.



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3.The learned counsel for petitioner submits that after dismissal of the appeal, the petitioner now surrendered before the learned Chief Judicial Magistrate, Tiruppur on 21.11.2023 and he is presently confined in Central Prison, Coimbatore.

4.The contention of the petitioner is that the petitioner was charged and tried by the Trial Court for offence under Sections 406, 420 of IPC and Sections 3 and 4 of Prize Chit and Money Circulation Scheme (Banning) Act, 1978 (hereinafter 'the Act'). The Trial Court on the conclusion of trial acquitted the petitioner for offence under Sections 406 and 420 of IPC. The Trial Court having acquitted the petitioner for offence under Sections 406 and 420 IPC ought to have acquitted the petitioner under Sections 3 and 4 of the Act, on the contrary, convicting the petitioner is not proper. He further submitted that in this case PW1 to PW5 are projected as subscribers to the petitioner's indigenous chit and the petitioner having cheated them had committed the offence. It is further submitted that the witnesses PW1 to PW5 issued notice prior to the registration of the case and the petitioner replied to the legal notice and submitted that there was no chit transaction, it was loan



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transaction, which had been given criminal colour as though the petitioner conducted chit. The Trial Court as well as Lower Appellate Court failed to consider this aspect. The only evidence adduced is PW6 and PW7, the stationery shop owners, who claimed that Exs.P1 to P7 were sold to the petitioner. Except oral evidence there is no documentary evidence to confirm that the petitioner purchased those items and used the same. There is no proof as to how Exs.P1 to P7 came into existence. Further submitted that the petitioner has arguable points and fair chance of success in this revision. Hence, he prays for granting suspension of sentence to the petitioner.

5.The learned Additional Public Prosecutor submits that in this case PW1 to PW5 are the subscribers to the chit. The petitioner was running an unregistered chit funds and collected huge sums of money from the subscribers. Each of them had paid their hard earned money to the petitioner. The petitioner cheated the victims, who are PW1 to PW5. The petitioner to gain confidence had issued note acknowledging receipt of payment of subscription amount. PW6 and PW7 are stationery shop owners, who have clearly identified that stationery/note supplied to the petitioner on which, the petitioner gave acknowledgment for receipt of money from PW1 to PW5. On



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the evidence of PW1 to PW11 and documents Exs.P1 to P9, the Trial Court convicted the petitioner. Though the petitioner attempted to give explanation through Exs.D1 and D2, the same was rejected by the Trial Court, which was confirmed by the Lower Appellate Court. Hence, prays for dismissal of the petition.

6. Considering the submissions made and on perusal of the material, it is seen that the petitioner was initially charged and tried for offence under Sections 406 and 420 of IPC and Sections 3 and 4 of Prize Chit and Money Circulation Scheme (Banning) Act. But the petitioner was acquitted for offence under Sections 406 and 420 of IPC. Admittedly, no cross appeal has been filed by the prosecution. The Trial Court inferred that Exs.P1 to P7 purchased from PW6 and PW7 and that has been used by the petitioner to record the chit amount. This finding may not be proper. Further taking note of the fact that there are arguable points involved in this revision and it would take some time for the revision to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on 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 and the petitioner 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 learned Chief Judicial Magistrate, Tiruppur.

8. Further, the petitioner shall appear before the Trial Court on the first working day of every English Calendar month 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.

9. Accordingly, this Criminal Miscellaneous Petition is ordered.

22.11.2023
(3/3)

rsi

Note: Issue Order Copy on 23.11.2023.

To



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in Crl.R.C.No.1933 of 2023

- 1.The Inspector of Police,
Central Crime Branch,
Tiruppur.
- 2.The Chief Judicial Magistrate,
Tiruppur.
- 3.The II Additional District and Sessions Judge,
Tiruppur.
- 4.The Superintendent,
Central Prison,
Coimbatore.
- 5.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

rsi

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