



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Wednesday, the Fourteenth day of June Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL.M.P. (MD)No.8218 of 2023
in
CRL.R.C. (MD)No.577 of 2023

VIJIL SELVAKUMAR

... PETITIONER/APPELLANT/ACCUSED

Vs

LYSAMMAL

... RESPONDENT/RESPONDENT/COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the Sentence imposed by Learned Judicial Magistrate No.I,Padmanabhapuram in STC.No.434 of 2017 dt.4.1.2019 confirmed by Learned Additional District and Sessions Court,Padmanabhapuram in Crl.A.No.12 of 2019 dt.18.11.2022 till the disposal of revision petition.

Prayer in CRL.R.C. (MD)No.577 of 2023:

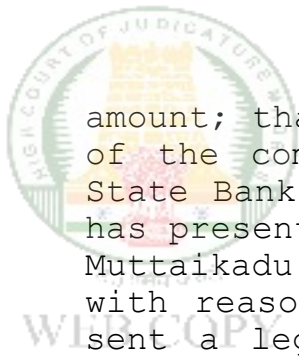
To call for the records relating to the Judgment in Crl.A.No.12 of 2019 passed by Additional District and Sessions Court, Padmanabhapuram dt.18.11.2022 confirming the conviction judgment in STC.No.434 of 2017 passed by Learned Judicial Magistrate No.I,Padmanabhapuram dated 04.01.2019 and set aside the same and acquit the Petitioner/Accused.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.K.P.NARAYANAKUMAR, Advocate for the petitioner and of M/S.M.KRISHNASREETHAR, Advocate on behalf of the Respondent the court made the following order:-

The above petition has been filed to suspend the sentence imposed on the petitioner by the learned Judicial Magistrate No.I, Padmanabhapuram in S.T.C.No.434 of 2017, dated 04.01.2019, which was confirmed by the learned Additional District and Sessions Judge, Padmanabhapuram, in Crl.A.No.12 of 2019, dated 18.11.2022.

2. The case of the complainant is that the petitioner/accused has borrowed a sum of Rs.3,00,000/- from the complainant on 10.05.2017 for his family expenses and agreed to repay the said

<https://www.mhco.org.in/>



amount; that the petitioner has issued a post dated cheque of the complainant bearing No.851274, dated 14.06.2017 drawn on State Bank of India, Kothanallor Branch; that when the complainant has presented the cheque for collection through State Bank of India, Muttaikadu Branch on 05.07.2017, the same was returned on 07.07.2017 with reason as "Insufficient Funds", that the complainant has then sent a legal notice dated 03.08.2017 to the petitioner demanding repayment of the amount covered by the cheque, that the petitioner after receiving the notice, has sent a false reply, dated 11.08.2017 and that thereafter the complainant has filed a private complaint for the offence under Section 138 of Negotiable Instruments Act.

3. The learned counsel appearing for the petitioner would submit that the petitioner has been convicted by the trial Court for the alleged offence under Section 138 of Negotiable Instruments Act and sentenced him to undergo one year simple imprisonment and to pay a compensation of Rs.3,00,000/-.

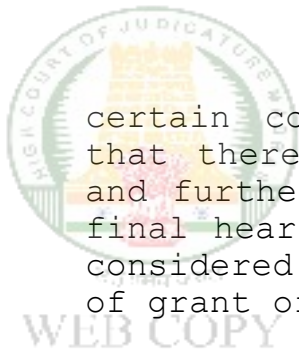
4. Challenging the above said conviction and sentence, the petitioner has filed an appeal in CrI.A.No.12 of 2019 on the file of the learned Additional District and Sessions Judge, Fast Track, Nagercoil. The learned Sessions Judge confirmed the conviction and sentence and dismissed the appeal. Being dissatisfied with the said conviction and sentence, the petitioner has preferred the present Criminal Revision along with the instant miscellaneous petition seeking suspension of sentence.

5. The learned counsel appearing for the petitioner would submit that the case was pending before the Principal Sessions Court, Nagercoil, Kanyakumari District and subsequently, after constitution of Additional District Court, Padmanabapuram, the case was transferred to the Additional District Court, Padmanabapuram. The learned Judge of the Additional District Court, Padmanabapuram, without hearing the revision petitioner as well as the respondent, has passed the impugned judgment. The learned counsel appearing for the petitioner would submit that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses.

6. The learned counsel appearing for the respondent would submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

7. This Court has carefully considered the rival contentions put forward by either side and also perused the materials available on record.

8. The learned counsel appearing for the petitioner pointed out several infirmities and inconsistencies in this case and also



certain contradictions in material particulars. The fact is that there are arguable points involved in this criminal revision and further the criminal revision is not likely to be taken up for final hearing in the near future and as such, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

9. Accordingly, the relief of suspension of sentence is granted to the petitioner on the following conditions:-

(i) The petitioner shall deposit 25% of the cheque amount **on or before 11.07.2023** to the credit in S.T.C.No.434 of 2017 on the file of the learned Judicial Magistrate No.I, Padmanabhapuram, failing which the sentence suspended shall automatically dismissed and the respondent is at liberty to execute the sentence imposed by the trial Court against the petitioner in the manner known to law;

(ii) On such deposit, the petitioner shall execute a bond for a sum of **Rs.25,000/- (Rupees Twenty Five Thousand only)** with two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Padmanabhapuram;

(iii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity; and

(iv) The petitioner shall appear before the trial Court once in a month i.e., on the first working day of every English calendar month at 10.30 a.m., until further orders and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 of 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.

sd/-

14/06/2023

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/06/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

das

TO

1.THE JUDICIAL MAGISTRATE NO.I, PADMANABHAPURAM,

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMARI @ NAGERCOIL.

<https://www.mhc.tn.gov.in/judis>



CRL.M.P.(MD)



23

3 ADDITIONAL DISTRICT AND SESSIONS JUDGE, PADMANABHAPURAM.

+1 CC to M/s.A.BALAKRISHNAN, Advocate (SR-8823[I] dated
15/06/2023)

WEB COPY

ORDER

IN

CRL.M.P. (MD) No.8218 of 2023

in

CRL.R.C. (MD) No.577 of 2023

Date :14/06/2023

RK/BUC/SAR- (20/06/2023) 4P/5C