



CRL MP(MD) No.5423 of 2023

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

Thursday, the Twenty Seventh day of July Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice K.K. RAMAKRISHNAN
CRL MP(MD) No.5423 of 2023
in
CRL RC(MD) No.373 of 2023

1 M/S.JAMBAI HARDWARE STORES
REP BY ITS MANAGING PARTNER,
S. MOHAMED YAHYA

2 S.MOHAMED YAHYA

3 S.HASSAN ALI

... PETITIONERS/ ACCUSED NOS.1 TO 3

Vs

PRAKASH A.KHANNA

... RESPONDENT/COMPLAINANT

Prayer in CRL MP(MD).5423/2023 :

To Suspend the sentence passed in STC No. 201 of 2008 on the file of the learned Judicial Magistrate No.IV, Trichirappalli dated 25.11.2019 confirmed by the learned Principal District and Sessions Judge, Trichy in Criminal Appeal No. 01 of 2020 dated 28.11.2022, pending disposal of the Revision Case.

Prayer in CRL RC(MD). 373/ 2023 :

To call for the entire records pertaining to the Criminal Appeal No.1 of 2020 on the file of the learned Principal District and Sessions Judge, Trichy and to set aside the judgment passed therein on 28.11.2022 which confirmed the judgment of the learned trial court passed in STC No.201/2008 dated 25.11.2019 on the file of the Learned Judicial Magistrate No.IV, Trichirappalli.

Order : This Criminal Miscellaneous petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.ARUMUGAM C.M., Advocate for the petitioner and of MR.K.PRABHAKAR, Advocate on behalf of the Respondent, while admitting the Criminal Revision Case,

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



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the court made the following order:-

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This petition is filed to suspend the sentence imposed by the learned Principal District and Sessions Judge, Trichirappalli, in Crl.A.No.1 of 2020 dated 28.11.2022, in confirming the conviction and sentence imposed by the learned Judicial Magistrate No.IV, Trichirappalli, in S.T.C.No.201 of 2008, dated 25.11.2019, pending disposal of the main Revision.

2.The case of the complainant is that the petitioners/accused have borrowed a sum of Rs.30 lakhs from the complainant on 10.10.2005 with interest at the rate of 12% per annum for developing their business. For that purpose, they have executed the promissory notes in favour of the defacto complainant. Due to default in payment of interest, the defacto complainant demanded the amount from the accused. On repeated demand made by the defacto complainant, the accused persons issued five cheques in respect of said amount. On 17.11.2007, when the defacto complainant represented the cheques for collection, the same was returned with reason "Insufficient Funds". Thereafter, the complainant has sent a legal notice on 21.11.2007 to the petitioners demanding repayment of the amount. The petitioners have sent a reply notice with false story on 22.12.2007. Hence, the complainant filed a private complaint before the learned Judicial Magistrate No.IV, Trichirappalli, for the offence under Section 138 of Negotiable Instruments Act and the same was taken on



cognizance in S.T.C.No.201 of 2008.

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3.The learned counsel for the petitioners would submit that after conducting trial, the petitioners were convicted by the learned Judicial Magistrate No.IV, Trichirappalli, for the offence under Section 138 of Negotiable Instruments Act, and A1 was sentenced to pay a fine of Rs.5,000/- and A2 was sentenced to undergo 6 months Simple Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo 1 month Simple Imprisonment and A3 was sentenced to undergo 6 months Simple Imprisonment and to pay a fine of Rs.5,000/- in default, to undergo 1 month Simple Imprisonment.

4. Challenging the above said conviction and sentence, the petitioners have filed an appeal in Crl.A.No.1 of 2020 on the file of the learned Principal District and Sessions Judge, Trichirappalli. The learned Principal Sessions Judge confirmed the conviction and sentence and dismissed the appeal on 28.11.2022. Being dissatisfied with the said conviction and sentence, the petitioners have preferred the present Criminal Revision along with the instant miscellaneous petition seeking suspension of sentence.

5.The learned counsel for the petitioners submitted that there are some arguable points involved in the criminal revision and the learned trial Judge as well as the Appellate Judge has not considered the evidence in proper prospect and hence, the



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judgments are suffered from perversity. He further submitted that the accused have no means to pay the amount. He further submitted that this Court by the order dated 12.04.2023 in Cr.MP(MD)No.5423 of 2023 in Cr.RC(MD)No.373 of 2023, directed the petitioners 2 and 3 to deposit a sum of Rs.3 lakhs each before the trial Court on or before 06.06.2023. Due to inability in arranging the said amount, they filed a petition in CrI.MP(MD)No.8388 of 2023 in CrI.RC(MD)No.373 of 2023 seeking further three weeks of time to comply with the condition. The said petition was allowed on 14.06.2023. Now the petitioners are ready to pay portion of the amount. Hence, he seeks for the suspension of sentence.

6. This Court has carefully considered the submission made by the counsel for the petitioners and also perused the materials available on record.

7. Considering the fact that the petitioners 2 and 3 are ready to pay portion of the amount i.e., Rs.3 lakhs and they seeks further time to deposit remaining amount of Rs.3 lakhs and as rightly contended by the learned counsel for the petitioners that there are some arguable points involved in the criminal revision, this Court is inclined to grant suspension of sentence.

8. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the revision with the following directions:-



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(i) The petitioners 2 and 3 shall deposit Rs.3 lakhs (Rupees Three Lakhs Only) to the credit of S.T.C.No.201 of 2008 on the file of the learned Judicial Magistrate No.IV, Trichirappalli, within a period of one week from today.

(ii) The petitioners 2 and 3 shall deposit a further sum of Rs.3 lakhs (Rupees Three Lakhs Only) to the credit of S.T.C.No.201 of 2008 on the file of the learned Judicial Magistrate No.IV, Trichirappalli, within a period of four weeks from the date of receipt of a copy of this order, 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 petitioners 2 and 3 in the manner known to law;

(iii) On such deposit, the petitioners 2 & 3 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.IV, Trichirappalli, ;

(iv) 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

(v) The petitioners 2 and 3 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.



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(vi) The learned Judicial Magistrate No.IV, Trichirappalli, is directed to re-deposited the said amount of Rs.3 lakhs (Rupees Three Lakhs Only) in a nationalised bank in the interest recurring account till the disposal of the Revision.

sd/-
27/07/2023

/ TRUE COPY /

/08/2023

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

dss

TO

1 THE PRINCIPAL DISTRICT AND SESSIONS JUDGE, TRICHY DISTRICT.

2 THE JUDICIAL MAGISTRATE NO.IV, TIRUCHIRAPPALLI DISTRICT.

3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TIRUCHIRAPPALLI DISTRICT.

+1 CC to M/s.C.M.ARUMUGAM, Advocate (SR-11550[I] dated 31/07/2023)

ORDER IN
CRL MP(MD) No.5423 of 2023
in
CRL A(MD) No.373 of 2023
Date :27/07/2023

RS/DD/SAR-(02.08.2023) 6P 5C
Madurai Bench of Madras High Court is issuing
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