



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

Tuesday, the Twenty Seventh day of June Two Thousand and Twenty
Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

Crl.M.P. (MD)No.9143 of 2023

in

Crl.R.C. (MD)No.653 of 2023

SURENDRAN

... PETITIONER / REVISION PETITIONER

Vs

GOPAKUMARI AMMA

... RESPONDENT / RESPONDENT

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 in Crl.A.No.61 of 2012 on the file of the Additional District and Sessions Judge, Padmanabhapuram dated 04.11.2022 confirming the conviction imposed in C.C.No.422 of 2006 on the file of the Judicial Magistrate, Padmanabhapuram dated 26.07.2012 and grant bail to the petitioner Surendran, pending disposal of the Criminal Revision petition.

Prayer in CRL RC(MD). 653/ 2023 :

To call for the records and set aside the judgment of conviction imposed in Crl.A.No.61 of 2012 on the file of the Additional District and Sessions Judge, Padmanabhapuram dated 04.11.2022 confirming the conviction imposed in C.C.No.422 of 2006 on the file of the Judicial Magistrate, Padmanabhapuram dated 26.07.2012.

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.APPAJI C.K.M., Advocate for the petitioner and of MR.T.ANTONY ARUL RAJ, 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, Padmanabhapuram, in C.C.No.422 of 2006, dated 26.07.2012, which was confirmed by the learned Additional District and Sessions Judge, Padmanabhapuram, in Crl.A.No.61 of 2012, dated 04.11.2022.

2. The case of the complainant is that the petitioner/accused has borrowed a sum of Rs.40,000/- from the complainant on 13.04.2006 and to discharge the above said liability the petitioner has issued a post dated cheque bearing No.437173 dated 13.04.2006 drawn on

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State Bank of Travancore, Balaramapuram Branch, that the complainant has presented the cheque for collection through her Thiruvananthapuram District Co-operative Bank, Parasala Branch on 01.07.2006, the same was returned with reason "amount exceeds arrangement", that the complainant has then sent a legal notice dated 13.07.2006 to the petitioner demanding repayment of the amount covered by the cheque, that the petitioner after receiving the notice, has failed to repay the amount and also failed to reply the notice 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 10 months simple imprisonment and to pay a compensation of Rs.80,000/-, in default, to undergo 6 months simple imprisonment.

4. Challenging the above said conviction and sentence, the petitioner has filed an appeal in CrI.A.No.61 of 2012 on the file of the learned Additional District and Sessions Judge, Padmanabhapuram. 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 there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses.

6. This Court has carefully considered the contentions put forth by the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and also perused the materials available on record.

7. The learned counsel appearing for the petitioner pointed out that certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The fact remains 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.

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

(i) The petitioner shall deposit the **entire compensation amount** on or before **24.07.2023** to the credit

in C.C.No.422 of 2006 on the file of the learned Judicial



Magistrate, Padmanabhapuram, failing which the sentence suspended shall automatically be dismissed;

(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 Judicial Magistrate No.1, 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/-

27/06/2023

/ TRUE COPY /

27/06/2023

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

TO

- 1 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
PADMANABHAPURAM.
- 2 THE JUDICIAL MAGISTRATE,
PADMANABHAPURAM.
- 3 THE CHIEF JUDICIAL MAGISTRATE
KANYAKUMARI DISTRICT AT NAGERCOIL
- 4 THE JUDICIAL MAGISTRATE NO.I
PADMANABHAPURAM.
- 6 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI.

+1 CC to M/s.C.K.M.APPAJI, Advocate (SR-9635[I] dated 27/06/2023)

ORDER

IN

CrI.M.P. (MD) No.9143 of 2023
in

CrI.R.C. (MD) No.653 of 2023

Date :27/06/2023

CSM

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