



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

Friday, the Twenty Eighth day of April Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.7270 of 2023
in
CRL RC(MD) No.494 of 2023

SUDALAIYANDI

... PETITIONER/PETITIONER

Vs

NAGARAJAN

... 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 by the Honble Principal Sessions Judge, Thoothukudi in CA.No.98/2018 dt.27/11/2020 by confirming the sentence of imprisonment imposed by the Learned Judicial Magistrate, (FTC) Thoothukudi in CC No.234/2015 dt.20/11/18 and enlarge the petitioner on bail pending disposal of the appeal.

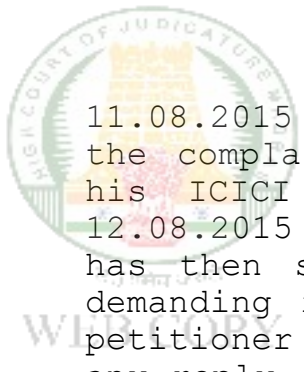
Prayer in CRL RC(MD). 494/ 2023 :

To call for the records and set aside the judgement of the learned Principal Sessions Judge, Thoothukudi in CA.No.98/2018 dt.27/11/2020 by confirming the conviction judgement of the learned Fast Track Court (Magisterial Level), Thoothukudi in C.C.No.234 of 2015 dated 20.11.2018.

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.VISHNUVARDHAN S, Advocate for the petitioner and of MR.C.JEGANATHAN, 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 (FTC), Thoothukudi, in C.C.No.234 of 2015, dated 20.11.2018, which was confirmed by the learned Principal Sessions Judge, Thoothukudi, in C.A.No.98 of 2018, dated 27.11.2020.

2. The case of the complainant is that the petitioner/accused has borrowed a sum of Rs.5,00,000/- from the complainant on 14.03.2015 for his family expenses and agreed to repay the said amount within three months, that the petitioner has issued a post dated cheque in favour of the complainant bearing No.795115 dated



11.08.2015 drawn on Syndicate Bank, Thoothukudi Branch, then the complainant has represented the cheque for collection through his ICICI Bank, Thoothukudi Branch, the same was returned on 12.08.2015 with reason "Insufficient Funds", that the complainant has then sent a legal notice dated 17.08.2015 to the petitioner demanding repayment of the amount covered by the cheque, that the petitioner after receiving the notice, has not repaid the amount or any reply. Hence, 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.5,00,000/-, in default, to undergo one month simple imprisonment.

4. Challenging the above said conviction and sentence, the petitioner has filed an appeal in Crl.A.No.98 of 2018 on the file of the learned Principal Sessions Judge, Thoothukudi. The learned Principal 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.

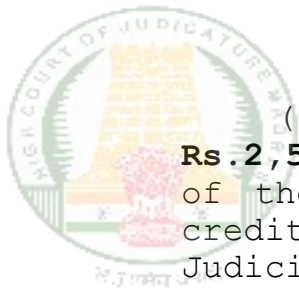
6. The learned counsel appearing for the respondent would submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

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 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.

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

<https://www.hc.madras.gov.in/>



(i) The petitioner shall deposit a sum **Rs.2,50,000/- (Rupees Two Lakhs Fifty Thousand Only)** (50% of the cheque amount) on or before 12.06.2023, to the credit in C.C.No.234 of 2015 on the file of the learned Judicial Magistrate (FTC), Thoothukudi, 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 Judicial Magistrate (FTC) Thoothukudi;

(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.

(v) the respondent is also permitted to withdraw 50% of the deposited amount before the trial Court.

sd/-

28/04/2023

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28/04/2023

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

das

TO

- 1 THE PRINCIPAL SESSIONS JUDGE, THOOTHUKUDI.
- 2 THE JUDICIAL MAGISTRATE (FTC), THOOTHUKUDI.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, THOOTHUKUDI.
- 4 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI,
TIRUNELVELI DISTRICT.

ORDER IN
CRL MP(MD) No.7270 of 2023
in
CRL RC(MD) No.494 of 2023
Date :28/04/2023

RS/SSS/SAR-(28.04.2023) 3P 5C

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