



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

Thursday, the Thirteenth day of April Two Thousand and Twenty Three

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PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.5909 & 5910 of 2023
in
CRL RC(MD) NO.403 of 2023

NISHA SHYAM

... PETITIONER/PETITIONER
in BOTH THE PETITIONS

Vs

P.RAJAGOPAL

... RESPONDENT/RESPONDENT
in BOTH THE PETITIONS

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 of imprisonment and conviction dated 10.03.2023 made in Crl A No. 5 of 2015 on the file of the learned Additional District and Sessions Judge, (Fast Track Court), Kanniyakumari at Nagercoil, confirming the judgment conviction dated 23.12.2014 made in C.C.No.28 of 2012 on the file of the learned Judicial Magistrate(Fast Track Court) No.I, Nagercoil, pending disposal of the Criminal Revision Petition.

Prayer in CRL MP(MD). 5910/ 2023 :

To exempt the petitioner from surrender as per the judgment and conviction dated 10.03.2023 made in Crl A No. 5 of 2015 on the file of the learned Additional District and Sessions Judge (Fast Track Court) Kanniyakumari at Nagercoil, confirming the Judgment conviction dated 23.12.2014 made in C.C.No.28 of 2012 on the file of the learned Judicial Magistrate(Fast Track Court) No.I, Nagercoil, pending disposal of the Criminal Revision Petition.

Prayer in CRL RC(MD). 403/ 2023 :

To call for the records and set aside the judgment and conviction dated 10.03.2023 made in Crl A No. 5 of 2015 on the file of the learned Additional District and Sessions Judge (Fast Track Court), Kanniyakumari at Nagercoil, confirming the judgment conviction dated 23.12.2014 made in C.C.No.28 of 2012 on the file of the learned Judicial Magistrate(Fast Track Court) No.I, Nagercoil, pending disposal of the Criminal Revision Petition.



Order : These petitions coming up for orders on this day, upon perusing the petitions filed in support thereof and upon hearing the arguments of M/S.SELVAKUMARAN.T, Advocate for the petitioner in both the cases, the Court made the following order:-

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The above petition has been filed to suspend the sentence imposed on the petitioner by the learned Judicial Magistrate, (Fast Track Court) No.I, Nagercoil, in C.C.No.28 of 2012, dated 23.12.2014, which was confirmed by the learned Additional District and Sessions Judge, Fast Track Court, Kanniyakumari at Nagercoil, in CrI.A.No.5 of 2015, dated 10.03.2023.

2. The case of the complainant is that the complainant and his colleagues had decided for a tour, for which, the complainant approached a travel agency, which is operated by the petitioner and her husband/A2. The petitioner's husband instructed the complainant to remit an advance for tour booking and a sum of Rs.75,000/- was paid to the accused account. Thereafter, the accused informed that the tour cost of each members is Rs.31,300/-, and hence, a sum of Rs.10,09,500/- was paid to the accused bank account. The tour became disaster and the tour members returned to their home, after spending their own money other than they paid to the travel operators. Since there existed disputes between them, the petitioner has issued cheque for settle the dispute. When the cheque was presented for collection, the same was returned as "Insufficient Funds". The complainant has then sent a legal notice dated 04.08.2010 to the petitioner demanding repayment of the amount covered by the cheque, but there was no reply from the petitioner. 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 her to undergo 6 months simple imprisonment and to pay a compensation of Rs.3,52,000/- to the complainant, in default, to undergo one month simple imprisonment.

4. Challenging the above said conviction and sentence, the petitioner has filed an appeal in CrI.A.No.5 of 2015 on the file of the learned Additional District and Sessions Judge, Fast Track Court, Kanniyakumari at Nagercoil. The learned Sessions Judge confirmed the conviction and sentence and dismissed the appeal. Being dissatisfied with the dismissal of the appeal, the petitioner has preferred the present Criminal Revision along with the above 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. Heard the learned counsel for the petitioner and also perused the records.

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 is granted to the petitioner on the following conditions:-

(i) The petitioner shall deposit 50 % of the compensation amount on or before 07.06.2023 to the credit in C.C.No.28 of 2012 Judicial Magistrate, (Fast Track Court) No.I, Nagercoil, 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, (Fast Track Court) No.I, Nagercoil;

(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. Consequently, CrI.M.P.(MD) No.5910 of 2023, is dismissed.

sd/-

13/04/2023

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/04/2023

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

TO

1 THE ADDITIONAL DISTRICT AND
SESSIONS JUDGE, (FAST TRACK COURT),
RANIPAKUMARI AT NAGERCOIL.



2 THE JUDICIAL MAGISTRATE
(FAST TRACK COURT) NO.I, NAGERCOIL.

3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
KANYAKUMARI AT NAGERCOIL.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1 CC to M/s.SELVAKUMARAN.T, Advocate (SR-5825[I] dated
13/04/2023)

ORDER
IN
CRL MP (MD) No.5909
& 5910 of 2023
in
CRL RC (MD) NO.403 of 2023
Date :13/04/2023

SS/BUC/SAR II/19/04/2023/4P/6C