



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

Monday, the Seventeenth day of April Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.6032 of 2023
in
CRL RC (MD) No.411 of 2023

R.SUYAMBURAJ

... Petitioner / Petitioner /
Appellant / Accused

Vs

N.UMA

... Respondent / 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 execution of sentence passed in C.A No.110/2017 by Judgment dated 02.03.2023 on the file of Additional District and Sessions Judge Cum Fast Track Court, Nagercoil confirming the Judgment dt.28.07.2017 passed in CC No.571/2012 on the file of Fast Track Court (Magisterial Level) No.II, Nagercoil and release the petitioner on Bail in the event of arrest pending disposal of the above Criminal revision.

Prayer in CRL RC(MD). 411/ 2023 :

To call for the records to the judgment dated 02.03.2023 made in C.A No.110/2017 on the file of Additional District and Sessions Judge Cum Fast Track Court, Nagercoil conforming the judgment dated 28.07.2017 passed in CC No.571/2012 on the file file of Fast Track Court (Magisterial Level) No.II, Nagercoil and set aside the same.

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.SIVA SANKAR.M, Advocate for the petitioner and of on behalf of the Respondents 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, Fast Track Court (Magisterial Level) No.II, Nagercoil, in C.C.No.571 of 2012, dated 28.07.2017, which was confirmed by the learned Additional District and Sessions Judge cum Fast Track Court, Nagercoil, in Crl.A.No.110 of 2017, dated 02.03.2023.



2. The case of the complainant is that the petitioner has borrowed a sum of Rs.3,50,000/- from the complainant on 15.11.2011 for his family expenses and to discharge the above said liability the petitioner has issued a post dated cheque bearing No.201673 dated 15.05.2012 drawn on Union Bank of India, Vadasery Branch, that when the complainant has represented the cheque for collection through his Canara Bank, Vadasery Branch on 15.05.2012, the same was returned on 16.05.2012 with reason "Insufficient Funds", that the complainant has then sent a legal notice dated 23.05.2012 to the petitioner demanding repayment of the amount covered by the cheque, that the petitioner after receiving the notice, has sent a reply notice disputing the liability and the issuance of the cheque 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 6 months simple imprisonment and to pay a compensation of Rs.3,50,000/-, which is payable within 2 months from the date of that judgment, in default, to undergo 1 month simple imprisonment.

4. Challenging the above said conviction and sentence, the petitioner has filed an appeal in Crl.A.No.110 of 2017 on the file of the learned Additional District and Sessions Judge cum Fast Track Court, 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 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 forward by the learned counsel appearing for the petitioner 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 is granted to the petitioner on the following conditions:-

(i) The petitioner shall deposit **50% of the compensation amount** on or before **08.06.2023** to the credit in C.C.No.571 of 2012 on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level) No.II, Nagercoil, failing which the sentence suspended shall automatically dismissed and the concerned police 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 Additional District and Sessions Judge cum Fast Track Court, 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.

sd/-
17/04/2023

/ TRUE COPY /

21/04/2023

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

CSM

To

1.The Additional District and Sessions Judge cum
Fast Track Court, Nagercoil.

2.The Judicial Magistrate,
Fast Track Court (Magisterial Level) No.II,
Nagercoil.

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



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CRL MP(MD)



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+1 CC to M/s.M.SIVA SHANKAR, Advocate (SR-5894[I] dated
17/04/2023)

ORDER

IN

CRL MP (MD) No.6032 of 2023

in

CRL RC (MD) No.411 of 2023

Date :17/04/2023

ED/VR/SAR- (21/04/2023) 4P 4C