



CRL MP(MD) No.12456 of 2023

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

Monday, the Twenty Eighth day of August Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.K. RAMAKRISHNAN

CRL MP(MD) No.12456 of 2023

in

CRL RC(MD) No.961 of 2023

GOPALAKRISHNAN

... PETITIONER/PETITIONER

Vs

State Rep.by
THE INSPECTOR OF POLICE
VEMBAKKOTTAI POLICE STATION,
THOOTHUKUDI DISTRICT.
CRIME NO.81/2001.

... RESPONDENT/RESPONDENT

Criminal Miscellaneous 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 upon the petitioner in CA.No.145/2013 dated 04.09.2019 on the file of learned Additional District Court, Srivilliputhur confirming the conviction and sentence passed by the learned Judicial Magistrate No.II, Sattur in C.C.No.65 of 2005 dated 19.09.2013 pending disposal of above Criminal Revision Petition.

Prayer in CRL RC(MD). 961/ 2023 :

To call for the records relating to the order passed by the learned Additional District Court, Srivilliputhur in CA.No.145/2023 dated 04.09.2019 confirming the conviction and sentence passed by the learned Judicial Magistrate No.II, Sattur in C.C.No.65 of 2005 dated 19.09.2013 and set aside the same and allow this Revision Petition.



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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.SIVAKUMAR.R, Advocate for the petitioner and of MR.M.VAIKKAM KARUNANITHI, Government Advocate (Crl.Side) on behalf of the Respondent, while admitting the Criminal Revision Case, the court made the following order:-

This petition is filed to suspend the sentence imposed by the Additional District Court, Srivilliputhur, in Crl.A.No.145 of 2023 dated 04.09.2019, in confirming the conviction and sentence imposed by learned Judicial Magistrate No.II, Sattur, in C.C.No.65 of 2005, dated 19.09.2013, and enlarge the petitioner on bail pending disposal of the Criminal Revision.

2.According to the petitioner, the petitioner was working as 'salesman' in the Ration Shop, Vijayarengapuram, belongs to the Primary Agricultural Co-operative Credit Society, Thayilpatti, Sivakasi. He had misappropriated a sum of Rs.41,522.25 by not paying the sales amount in the Bank. Hence the respondent police registered a case in Crime No.81 of 2001 for the offence under Section 409 of IPC. After investigation, the respondent police filed final report before the learned Judicial Magistrate No.II, Sattur, and the same was taken on cognizance in C.C.No.65 of 2005 for the offence under Section 409 of IPC.

3.The learned counsel for the petitioner would submit that the petitioner was convicted by the learned learned Judicial Magistrate No.II, Sattur, for the offence under Section 409 of IPC and sentenced him to undergo 3 years Rigorous



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imprisonment and to pay a fine of Rs.3,000/-, in default to undergo 6 months Simple Imprisonment. The Additional District Court, Srivilliputhur, dismissed the appeal filed by the petitioner, in Crl.A.No.145 of 2023. Aggrieved by the said order, the petitioner has preferred the present revision along with the present miscellaneous petition seeking suspension of sentence.

4. The learned counsel for the petitioner 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 judgment is suffered from perversity. He further submitted that enquiry under Section 81 of Tamil Nadu Co-operative Societies Act, has not been complied with as per the time limit fixed by the Co-operative Societies. He further submitted that the petitioner is ready to deposit a sum of Rs.41,000/- before the trial Judge to show his bond fide and he is in custody from 04.08.2023 onwards. Hence, he seeks for the suspension of sentence.

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

6.The submission of the learned counsel for the petitioner that the respondent police has not produced the adequate evidence to prove the charge of offence under Section 409 IPC and the registration of FIR on the basis of Section 81 report of the Co-



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operative Societies Act is not valid for non-compliance of the relevant provision of the Act required to be considered in detail. So, considering the above legal aspect and the period of incarceration and the petitioner's undertaking to deposit a sum of Rs.41,000/-, this Court is inclined to grant suspension of sentence and accordingly, this petition is allowed on the following conditions:

(i) the petitioner is directed to deposit a sum of Rs.41,000/- (Rupees Forty One Thousand Only) to the credit of C.C.No.65 of 2005 on the file of the learned Judicial Magistrate No.II, Sattur, within a period of four weeks from the date of receipt of a copy of this order, failing which the sentence suspended shall automatically be 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 is directed to be enlarged on bail on his executing a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.II, Sattur;

(iii) the petitioner shall appear before the trial Court once in a month i.e., on the first working day of every month at 10.30 a.m. pending revision; and



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(iv) the learned trial Judge is hereby directed to deposit the said amount in any one of the Nationalised Bank in interest bearing account.

7.Post the matter for reporting compliance on 25.09.2023.

sd/-
28/08/2023

/ TRUE COPY /

29/08/2023

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

dss

TO

1 THE ADDITIONAL DISTRICT JUDGE, SRIVILLIPUTTUR.

2 THE JUDICIAL MAGISTRATE NO.II, SATTUR.

3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THOOTHUKUDI DISTRICT.

4 THE INSPECTOR OF POLICE, VEMBAKKOTTAI POLICE STATION,
THOOTHUKUDI DISTRICT.

5 THE SUPERINTEDENT, CENTRAL PRISON, MADURAI.

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

COPY TO

THE REGISTRAR (JUDICIAL),
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.



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+1 CC to M/s.R.SIVAKUMAR, Advocate (SR-12857[I] dated 28/08/2023)

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ORDER
IN
CRL MP(MD) No.12456 of 2023
in
CRL RC(MD) No.961 of 2023
Date :28/08/2023

RS//SAR-(29.08.2023) 6P 9C

Madurai Bench of Madras High Court is issuing
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