



CRL MP(MD) No.10796 of 2023

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

Wednesday, the Second day of August Two Thousand and Twenty Three

PRESENT

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

CRL MP(MD) No.10796 of 2023

in

CRL RC(MD) No.801 of 2023

SYED SULAIMAN

... Petitioner / Petitioner /
Appellant / Accused

Vs

A.HAKKIM

... Respondent / Respondent /
Respondent / Complainant

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 as imposed on Petitioner by the Learned Judicial Magistrate,Tenkasi,Tenkasi District dt.29.6.2022 and subsequently as confirmed by the Learned Additional District and Sessions Judge(FTC),Tenkasi,Tenkasi District dated 3.7.2023 in C.A.No.35 of 2022, enlarge the petitioner on bail pending disposal of the above criminal revision petition before this Hon'ble Court.

Prayer in CRL RC(MD). 801/ 2023 :

To call for the records setting aside the order or conviction and sentenced to undergo 1 year Simple Imprisonment for the offence U/s.138 of N.I.Act and to pay the cheque amount of Rs.48,00,000(Rupees Forty Eight Lakhs Only)as compensation to the complainant within one month from today in default to undergo three months of simple imprisonment by the Learned Judicial Magistrate, Tenkasi, Tenkasi District dated 29.06.2022 as made in S.T.C.No.327 of 2020 and subsequently as confirmed by the Additional District and Sessions Judge (Fast Track Court), Tenkasi, Tenkasi District dated 03.07.2023 made in C.A.No.35 of 2022 forthwith.



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Order : This criminal miscellaneous petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.PALANI VELAYUTHAM S, Advocate for the petitioner, the court made the following order:-

This petition has been filed to suspend the sentence imposed on the petitioner by the learned Judicial Magistrate, Tenkasi in S.T.C.No.327 of 2020 dated 29.06.2022, which was confirmed by the learned Additional District and Sessions Judge, Tenkasi, in C.A.No.35 of 2022, dated 03.07.2023.

2. The case of the respondent is that the petitioner/accused is doing real estate business and construction business in Tenkasi and the complainant was doing business in Dubai and on 16.07.2019, the petitioner approached the complainant for a loan of Rs.48,00,000/- and received the amount on 16.07.2019 at his residence and for proper repayment of the said amount, the accused had issued a cheque bearing No.810420 dated 18.03.2020 drawn on State Bank of India, Tenkasi Branch. While, the complainant presented the said cheque for payment on 18.03.2020, the same was returned with an endorsement as "insufficient funds" in the account of the petitioner/accused, for which, the complainant had also issued statutory notice. The petitioner/accused did not receive the notice and further the petitioner neither paid any amount nor sent any reply. Hence, the respondent filed a complaint under Section 138 of Negotiable Instruments act, and the same was taken on file in S.T.C.No.327 of 2020 before the Judicial Magistrate Court, Tenkasi.



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3. During trial, the complainant has examined as P.W.1 and exhibited 4 documents as Ex.P.1 to Ex.P.4 and no material objects were marked. On the side of the accused, four documents were exhibited as Ex.D1 to Ex.D4.

4. The learned Judicial Magistrate, Tenkasi, after full-fledged trial, has passed the judgment in S.T.C.No.327 of 2020, dated 29.06.2022 and convicted the petitioner/accused for the offence under Section 138 of the Negotiable Instrument Act, and sentenced him to undergo one year Simple Imprisonment and to pay the cheque amount of Rs.48,00,000/- (Rupees Forty Eight Lakhs Only) as compensation to the complainant within a period of one month from the date of the judgment in default to undergo three months of Simple Imprisonment. Challenging the above said conviction and sentence, the petitioner preferred the Criminal Appeal before the learned Additional District and Sessions Judge, Tenkasi in C.A.No.35 of 2022. However, the same was dismissed on 03.07.2023, thereby confirming the conviction and sentence imposed on the petitioner. Aggrieved over the above said conviction and sentence, imposed by the Courts below, the petitioner preferred the present Criminal Revision Case along with the present Miscellaneous Petition seeking for suspension of sentence.

5. The learned counsel for the petitioner would submit that there are several infirmities in the prosecution case and further there are contradictions in material



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particulars between the evidence of the prosecution witnesses. Further as per the evidence of P.W.1, he has not produced any evidence and documents before the Courts below to prove his case. Hence, he seeks suspension of sentence.

6. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.

7. The petitioner is said to have committed the offence under Section 138 of the Negotiable Instrument Act. It is the specific case of the petitioner that as per the evidence of P.W.1, the complainant has not produced any evidence and documents before the Courts below to prove his case and the respondent has no means to give money. Further, the learned counsel for the petitioner pointed out certain infirmities and inconsistencies in this case and also certain contradictions in material particulars and he is ready to deposit a sum of Rs.3,00,000/-. So this Court prima facie satisfied 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 inclined to suspend the sentence imposed on the petitioner.

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

(i) The petitioner shall deposit a sum of Rs.3,00,000/-



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(Rupees Three Lakhs Only) within a period of four weeks from the date of receipt of a copy of this order.

(ii) 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 learned Judicial Magistrate, Tenkasi District.

(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 concerned Court once in a month i.e., on first working day of every English calendar month at 10.30 a.m., till the disposal of the appeal.

sd/-
02/08/2023

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/08/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

SBN



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To **மேலும் உரிமை**

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1.The Additional District and Sessions Judge,
(Fast Track Court), Tenkasi, Tenkasi District.

2.The Judicial Magistrate, Tenkasi.

3.Do through the Chief Judicial Magistrate, Tirunelveli District.

+1 CC to M/s.S.PALANI VELAYUTHAM, Advocate (SR-11687[I] dated
02/08/2023)

ORDER

IN

CRL MP(MD) No.10796 of 2023

in

CRL RC(MD) No.801 of 2023

Date :02/08/2023

ED/VRS/SAR- (17/08/2023) 6P / 5C

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