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Crl.M.P.Nos.1119 and 1120 of 2022 In Crl.R.C.No.112 of 2022

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M.DHANDAPANI,J.

Petitioner was convicted for an offence under Section 138 of the Negotiable Instruments Act and was sentenced to undergo one year R.I. and to pay a fine of Rs.2,000/- in default to undergo three months R.I. The petitioner was further directed to pay the cheque amount of Rs.21,11,298/- and compensation of Rs.5 Lakhs [totally Rs.26,11,298/-] to the complainant/ respondent by the learned Judicial Magistrate No.1, Tiruppur under judgment dated 03.03.2017 in S.T.C.No.1073 of 2006. The conviction and sentence imposed by the trial Court was confirmed by the learned I Additional Sessions Judge, Tiruppur, under judgment in C.A.No.39 of 2017 dated 30.07.2021. Hence, the petitioner seeks suspension of sentence.

2.Learned counsel for the petitioner would submit that there are several infirmities and inconsistencies found in the prosecution case. It is contended that there are contradictions in the material particulars between the evidence of the prosecution witnesses. It is further represented that there is no precondition requiring the petitioner's

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surrender or being in confinement in availing the relief of suspension of sentence under Section 397 Cr.P.C. in exercise of revisional powers by this Court. The decisions of the Honourable Apex Court in **BIHARI PRASAD SINGH VS STATE OF BIHAR AND ANOTHER (2000 SCC (Cri) 1380)** and that of the **IBRAHIM VS STATE OF KERALA (1979 KLT 857)** are relied upon in this regard.

3.The learned counsel for the petitioner would further submit that there are two cheques involved in this case viz., cheque bearing no.842533 for a sum of Rs.1,27,956/- and cheque bearing no.332866 for a sum of Rs.19,83,342/- [totally Rs.21,11,298/-], out of which, the petitioner has paid the respondent the cheque amount of Rs.1,27,956/- pertaining to cheque bearing no.842533 by way of Manager's Cheque bearing No.034601 dated 02.07.2024 drawn on HDFC Bank.

4.Heard the submissions made by the learned counsel appearing for the respondent.

5.The above decisions have been relied upon time and again by



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this Court towards reaching the conclusion that in moving a revision against conviction, the accused need not surrender and undergo confinement before seeking the relief of suspension of sentence pending disposal of the Criminal Revision.

6. Therefore, in view of the fact that there are several infirmities in the prosecution case and there are arguable points involved in the revision, as contended by learned counsel for petitioner, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

7. Since the petitioner has already paid the respondent, the cheque amount of Rs.1,27,956/- pertaining to cheque bearing no.842533, the substantive sentence of imprisonment alone is suspended on condition that the petitioner shall deposit 50% of the cheque amount pertaining to cheque bearing no.332866 i.e., a sum of Rs.9,91,671/- (Rupees Nine Lakhs and Ninety One Thousand Six Hundred and Seventy One Only) within a period of four weeks from the date of receipt of a copy of this order to the credit of S.T.C.No.1073 of 2006 on the file of the learned Judicial Magistrate

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No.I, Tiruppur, failing which, the suspension of substantive sentence of imprisonment alone granted today, shall stand automatically vacated, without any further reference to this Court and the petitioner is further directed to appear before the trial Court and execute 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.I Court, Tiruppur and on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.30a.m. pending revision.

8.The criminal miscellaneous petition in Crl.M.P.No.1119 of 2022 is ordered accordingly. In view of the order passed in Crl.M.P.No.1119 of 2022, the petition for exemption to surrender in Crl.M.P.No.1120 of 2022 is closed.

03.07.2024

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