



WEB COPY



*Crl.M.P.Nos.2137 & 2138 of 2024  
in Crl.R.C.No.238 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2024

CORAM:

THE HON'BLE **MR.JUSTICE M. NIRMAL KUMAR**

Crl.M.P.Nos.2137 and 2138 of 2024  
in  
Crl.R.C.No.238 of 2024

Ibrahim  
S/o.Farook

... Petitioner/Accused

Vs.

State represented by  
The Sub Inspector of Police,  
Central Crime Branch,  
EDF-1, Team-1,  
Vepery, Chennai – 600 007.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) of Cr.P.C to suspend the sentence imposed on the petitioner by order dated 08.03.2023 in C.C.No.5736 of 2018 on the file of Special Court of CCB and CBCID Metropolitan Magistrate, Egmore, Chennai to undergo 3 years rigorous imprisonment for the offence punishable under Section 420 IPC which is upheld by order dated 21.12.2023 in Crl.A.No.260 of 2023 on the file of XVII Additional Session cum District Judge, Chennai and to exempt the petitioner from surrendering before the Lower Court.



WEB COPY



*Crl.M.P.Nos.2137 & 2138 of 2024  
in Crl.R.C.No.238 of 2024*

For Petitioner : Mr.Abudu Kumar Rajarathinam,  
Senior Counsel  
for Mr.S.Ashok Kumar

For Respondent : Mr.S.Raja Kumar  
Additional Public Prosecutor

### **ORDER**

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence of imprisonment imposed on him in C.C.No.5736 of 2018 by a judgment dated 08.03.2023 passed by the learned Metropolitan Magistrate, Special Court for CCB & CBCID Cases, Egmore, Chennai and confirmed by the learned XVII Additional Sessions Judge, City Civil Court, Chennai made in C.A.No.260 of 2023 dated 21.12.2023 and enlarge the petitioner on bail pending disposal of the above revision and to exempt the petitioner from surrendering before the trial court pending disposal of the above revision.

2.The petitioner/Accused in C.C.No.5736 of 2018 was convicted by the trial Court by judgment dated 08.03.2023 and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.10,000/- in default to undergo 6 months rigorous imprisonment for offence under Section 420 of



*Crl.M.P.Nos.2137 & 2138 of 2024  
in Crl.R.C.No.238 of 2024*

WEB COPY

IPC. Aggrieved over the same, the petitioner preferred an appeal in C.A.No.260 of 2023 before the learned XVII Additional Sessions Judge, City Civil Court, Chennai. The learned Sessions Judge, by judgment dated 21.12.2023, dismissed the appeal confirming the conviction and sentence passed by the trial Court, against which, the petitioner preferred a revision in Crl.R.C.No.238 of 2024 before this Court along with the instant miscellaneous petitions seeking suspension of sentence and bail.

3.During trial, on the side of the prosecution, PW1 to PW7 examined and marked Exs.P1 to P7. On the side of the defence, the petitioner examined himself as DW1 and marked Exs.D1 to D3. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, had convicted the petitioner as stated above, which was confirmed by the Appellate Court.

4.The contention of the learned Senior Counsel for petitioner is that the petitioner is a Proprietor of M/s.Sky Roofing and M/s.Fathima Traders. He has dealings with cement sheets and metal sheets. The de-facto complainant was the President of Sri Anjeneya Panchamuka Jayamaruthi



*Crl.M.P.Nos.2137 & 2138 of 2024  
in Crl.R.C.No.238 of 2024*

Seva Temple Trust at Panchavadi. In the year 2010, the petitioner has erected shed for Panchavadi Anjeneyar temple for the de-facto complainant/PW1. Thereafter, further work was done by him in the year 2014. The de-facto complainant was to pay around Rs.11,00,000/-. He paid Rs.3,00,000/- as an advance and balance Rs.8,00,000/- was not paid. When the petitioner requested the de-facto complainant to pay back the amount for the work he has done, he introduced one Rajagopal of Mahatma Gandhi Medical College, Puducherry and informed that he would give him some more orders so that the petitioner can develop his business. Thereafter, he had also given a quotation for Rs.1.12 Crores and it was agreed to Rs.1.5 Crores. The petitioner completed the work in the college. There was a due of Rs.46,00,000/-, hence, the petitioner demanded the balance payment to be given by Rajagopal through the de-facto complainant. Thereafter, neither money was paid nor Rajagopal could be reached. The de-facto complainant, who was close friend and associate of the Rajagopal, fabricated a case as though the amount was repaid. The petitioner was called to the office of de-facto complainant on the fateful day on 08.11.2017, wherein the respondent police, who are in plain clothes, took the petitioner to the police station, arrest was shown and produced him for remand. Further he was also



*Crl.M.P.Nos.2137 & 2138 of 2024  
in Crl.R.C.No.238 of 2024*

physically handled and signature obtained in blank sheets. The petitioner examined himself as DW1 and given his evidence, there was no cross examination by the prosecution in this regard. Further, the trial Court as well as Lower Appellate Court not considered the petitioner's evidence. Added to it, Ex.P2/receipt is the only document on which, the petitioner was convicted. Referring to Ex.P2, learned Senior Counsel submitted that Ex.P2 is not a document, in which, the signature of PW1/de-facto complainant is not available. This document has been marked through PW2/Rangarajan. PW2 ought to have been referred or confronted with PW1, but it was not done so. In view of the same, this document cannot be accepted and the finding of the trial Court as well as Lower Appellate Court is not proper. Further submitted that it is a case under Section 420 of IPC and Section 41A Cr.P.C. procedure not followed. Hence, he prays for granting suspension of sentence to the petitioner.

5.The learned Additional Public Prosecutor on the other hand filed his counter and submitted that the de-facto complainant lodged a complaint against this petitioner that he received sum of Rs. 35,00,000/- to develop his business and complete the order which was already undertaken and about to



*Crl.M.P.Nos.2137 & 2138 of 2024  
in Crl.R.C.No.238 of 2024*

WEB COPY

complete. Further, he promised to repay the loan with interest before September 2016. In such circumstances, the petitioner failed to honour his promises which leads the de-facto complainant approached the respondent herein and lodged the complaint against this petitioner/Accused A1. Based on the above, a case was registered in CCB Crime No.280 of 2017, under Section 420 IPC against the accused on 23.08.2017. During the course of investigation, on 10.11.2017 the then Sub-Inspector of Police arrested the accused and recorded his confession statement in the presence of witnesses, then sent him to judicial custody.

5.1.He further submitted that after completion of investigation, the then Sub-Inspector of Police filed charge sheet against accused before the learned CCB/CBCID Metropolitan Magistrate, Egmore and the same was taken on file vide C.C.No.5736 of 2018. During trial, in order to prove the case of the prosecution, the prosecution has examined 7 witnesses and marked 7 exhibits and no material object marked. On the defence side one witness examined, 3 exhibits marked and no material objects marked. After conducting full-fledged trial, the learned CCB/CBCID Metropolitan Magistrate, Egmore by its judgment dated 08.03.2023 in C.C.No.5736 of 2018 convicted the Petitioner/accused as stated above. Aggrieved over the



*Crl.M.P.Nos.2137 & 2138 of 2024  
in Crl.R.C.No.238 of 2024*

above said conviction and sentence, the petitioner/accused filed a Criminal Appeal in C.A.No.260 of 2023, before the Learned XVII Additional Sessions cum District Judge, Chennai. Learned CCB/CBCID Metropolitan Magistrate, Egmore by its judgment dated 21.12.2023 confirmed the conviction imposed by the trial court in CC No. 5736 of 2018. Further the trial court issued warrant of Arrest (Non Bailable) on 03.02.2024.

5.2.He further submitted that the root of the commission of offence was that the petitioner induced the respondent to lend money with the false promises and refused to repay the same as of now. Further he has alleged that he was forced to sign in the blank papers but he has not brought this submission either in bail application or in 313 proceedings. He further submitted that on 03.02.2024 the Trial Court has ordered Warrant of Arrest against this petitioner. In order to escape from the arrest proceeding, he came before this Court by way of Revision petition on 05.02.2024.

5.3.He further submitted that the prosecution proved the case beyond all reasonable doubts. Both the Trial Court and Lower Appellate Court have accepted the prosecution case and imposed punishment on the petitioner/appellant / accused. There is no valid point available for the



*Crl.M.P.Nos.2137 & 2138 of 2024  
in Crl.R.C.No.238 of 2024*

petitioner to argue the matter. There is no perversity, illegality and impropriety of the concurrent findings of the courts below. Hence, the Criminal Revision is liable to be dismissed. Hence, prays for dismissal of the petition.

6.Considering the submissions made and on perusal of the materials available on record, it is seen that the entire case is rest on Ex.P2/receipt and DW1's evidence not referred or considered by both the Courts below. In view of the same, this Court finds that the finding of the Courts below needs to be reconsidered. Further taking note of the fact that there are arguable points involved in this revision and it would take some time for the revision to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioner.

7.Accordingly, the reliefs of suspension of sentence, exemption from surrendering and bail are granted on the following conditions till the disposal of the above Criminal Revision:

(a) The petitioner is ordered to be enlarged on bail, on condition that he shall execute a bond



WEB COPY



*Crl.M.P.Nos.2137 & 2138 of 2024  
in Crl.R.C.No.238 of 2024*

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 Metropolitan Magistrate, Special Court for CCB & CBCID Cases, Egmore, Chennai.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall appear before the Trial Court once in three months at 10.30 a.m. on the first working day of the month, until the disposal of the revision and if he is not able to appear before the Trial Court on that day, he shall make arrangements to file an application under Section 317 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.

8. Accordingly, this Criminal Miscellaneous Petition is ordered.

15.03.2024

rsi

**Note: Issue order copy on 18.03.2024.**



WEB COPY



*Crl.M.P.Nos.2137 & 2138 of 2024  
in Crl.R.C.No.238 of 2024*

**M. NIRMAL KUMAR, J.**

rsi

To

- 1.The Sub Inspector of Police,  
Central Crime Branch,  
EDF-1, Team-1,  
Vepery, Chennai – 600 007.
- 2.The Metropolitan Magistrate,  
Special Court for CCB & CBCID Cases,  
Egmore, Chennai
- 3.The XVII Additional Sessions Judge,  
City Civil Court, Chennai.
- 4.The Public Prosecutor,  
High Court, Madras.

**Crl.M.P.Nos.2137 and 2138 of 2024  
in  
Crl.R.C.No.238 of 2024**

**15.03.2024**