



Crl.M.P.No.4351 of 2024
in Crl.R.C.No.453 of 2024

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M.NIRMAL KUMAR, J.

This Criminal Miscellaneous Petition has been filed to suspend the execution of the sentence imposed by the learned II Additional Sessions Judge, Tiruchengode (lower appellate Court) in C.A.No.28 of 2021, dated 07.02.2024 confirming the judgment, dated 22.01.2021 in S.T.C.No.567 of 2017 passed by the learned Judicial Magistrate [FTC], Tiruchengode (trial Court) and also release the petitioner on bail pending disposal of the main Criminal Revision Case.

2.The petitioner was convicted by the trial Court for offence under Section 138 of Negotiable Instruments Act and sentenced to undergo Simple Imprisonment for six months and to pay Rs.1,00,000/- as compensation to the complainant within a period of one month under Section 357(3) Cr.P.C., in default to undergo Simple Imprisonment for one month. Against which, the petitioner preferred an appeal which was



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dismissed by the lower appellate Court confirming the conviction and sentence imposed by the trial Court.

3.The case of the prosecution is that the petitioner/accused is a bore well operator and known to the respondent/complainant for the past 20 years. The accused borrowed a sum of Rs.1,00,000/- from the respondent/complainant for his urgent business expenses on 01.08.2018 and promised to repay the same within a year along with interest. To discharge his liability, the petitioner/accused issued a post dated cheque bearing No.311263 dated 01.08.2017 for a sum of Rs.1,00,000/- drawn on ICICI Bank, Erode Branch in faovur of the respondent/complainant. The petitioner/accused paid the promised interest amount only for 8 months and thereafter, failed to pay any interest to the complainant. On the request of the petitioner/accused, the respondent/complainant presented the cheque for encashment on 26.10.2017 but the same was returned with an endorsement 'Account Closed'. Thereafter, statutory notice dated 07.11.2017 was issued but the same was returned unserved on 14.11.2017 and after receiving the notice, the accused neither issued reply notice nor made any payment.



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4. During the trial, on the side of the prosecution, one witness examined as PW1 and four documents marked as Exs.P1 to P4. On the side of the defence, one witness examined as D.W.1 and fourteen documents marked as Ex.D1 to Ex.D14. On conclusion of trial, the trial Court convicted the petitioner as stated above.

5. The learned Counsel appearing for the petitioner submitted that at the time of filing the appeal before the lower appellate Court, the petitioner paid 20% of the cheque amount i.e. Rs.20,000/-. She would further submit that now the petitioner is ready and willing to pay another 30% of the cheque amount i.e., Rs.30,000/- before the trial Court.

6. Considering the submissions and on perusal of the materials, it is seen that the petitioner is ready and willing to pay some amount, this Court is inclined to grant suspension of sentence.

7. In view of the above, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal on



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condition that the petitioner shall pay a sum of Rs.30,000/- [Rupees Thirty Thousand only] to the credit of S.T.C.No.567 of 2017 on the file of the learned Judicial Magistrate [FTC], Tiruchengode within a period of two weeks from the date of receipt of a copy of this order and the petitioner is ordered to be enlarged on bail, on condition that he shall 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 trial Court.

8.The petitioner shall appear before the Trial Court on the first working day of once in three months at 10.30 a.m., until the disposal of the appeal 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. Accordingly, this Miscellaneous Petition is ordered.

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