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*Crl.M.P.No.12283 of 2024
in Crl.R.C.No.1463 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2024

CORAM:

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

Crl.M.P.No.12283 of 2024
in
Crl.R.C.No.1463 of 2024

M.V.Ravisekar

... Petitioner/Accused

Vs.

Arumugam

... Respondent/Complainant

PRAYER: Criminal Miscellaneous Petition filed under Section 397(1) of Cr.P.C. to suspend the sentence of conviction imposed by the learned Judicial Magistrate, Fast Track Court at Magisterial Level at Thiruvannamalai in C.C.No.12 of 2019 by order dated 27.02.2023 pending disposal of the above Criminal Revision.

For Petitioner : Mr.V.C.Selvasekaran

For Respondent : Mr.E.Sathiyaraj

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence of conviction imposed by the learned Judicial Magistrate, Fast Track Court (Magisterial Level) at Thiruvannamalai in C.C.No.12 of 2019 by order dated 27.02.2023 pending disposal of the above Criminal Revision.



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2.The petitioner/accused in C.C.No.12 of 2019 was convicted by the Trial Court by judgment dated 27.02.2023 for offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo six months simple imprisonment and to pay a fine of Rs.6,00,000/-, which is one and half times the cheque amount. Aggrieved against the same, the petitioner preferred an appeal before the learned Additional District and Sessions Judge, Thiruvannamalai. The learned Sessions Judge, by judgment dated 22.12.2023, confirmed the conviction and sentence of the trial Court, against which, the petitioner preferred a revision before this Court in Crl.R.C.No.1463 of 2024 along with the instant miscellaneous petition seeking suspension of sentence and bail.

3.During trial, on the side of the prosecution, the respondent examined as PW1 and marked Exs.P1 to P7. On the side of the defence no witnesses examined and no documents marked. On conclusion of trial, the Trial Court on the evidence of witnesses and the materials produced, convicted the petitioner as stated above and the Appellate Court confirmed the same.



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4.The contention of the learned counsel for petitioner is that one Sampath borrowed a loan from the respondent and the said Sampath known to the petitioner. Hence, though the petitioner had taken loan earlier and discharged his entire liability, the cheque, which was given as security for the earlier loan, had been misused by the respondent and a false case lodged. According to the petitioner, he discharged his liability as regards the Cheques/Exs.P1 and P2. He further submitted that at the time of preferring an appeal, the petitioner deposited Rs.1,50,000/- before the trial Court. He further submitted that the trial Court as well as Lower Appellate Court not considered the petitioner's defence but finding signature not denied, invoking statutory presumption, convicted the petitioner. He further submitted that a civil suit in O.S.No.60 of 2019 filed by the respondent before the learned Principal District Judge, Thiruvannamalai and a decree obtained against the petitioner on 17.03.2020. The petitioner contested the suit. In the suit, the case projected by the respondent is that the petitioner along with his brother had taken a loan, in discharge of the same cheques were issued. As per the admitted case of the respondent, the petitioner's liability would be only 50% of the cheque amount and not the entire cheque amount. He further submitted that the petitioner was arrested on the conviction warrant and now he is in prison from 13.06.2024. The petitioner is ready to deposit the amount of



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Rs.1,50,000/- (Rupees One lakh Fifty thousand only) and he would further take steps to negotiate with the respondent and to arrive at a settlement.

5.The learned counsel for respondent submitted that the petitioner issued two cheques for Rs.2,00,000/- each, which were marked as Exs.P1 and P2. After issuing statutory notice and following the procedure, complaint has been lodged. The petitioner's defence were dismissed by both the trial Court as well as Lower Appellate Court. The petitioner's contention of civil suit is not new. The respondent already marked the judgment and decree copy in O.S.No.60 of 2019 dated 17.03.2020 as Ex.P7. The suit is at the execution stage and the petitioner not challenged the civil suit. He further submitted that the petitioner by giving one reason or other have been successfully dragging on the proceedings. The cheque is of the year 2018 and it is almost 6 years, the respondent is yet to see the colour of the coin. He further submitted that in the event the petitioner coming for settlement the same can be considered. He further submitted that now a Memo has been filed before the trial Court seeking return of Rs.1,50,000/-, which was already deposited by the petitioner at the time of preferring an appeal.



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6.Considering the submissions made and on perusal of the materials and the specific undertaking given by the petitioner that he is ready to deposit Rs.1,50,000/- immediately and thereafter approach the respondent for settlement, finding that the petitioner is a handicapped person, he is confined in Central Prison, Vellore from 13.06.2024, the offence being a bailable offence and it is merely on technicality of dishonour of cheque, this Court is inclined to suspend the sentence imposed on the petitioner.

7.Accordingly, the substantial sentence of imprisonment imposed on the petitioner is suspended with the following conditions:

(i)The petitioner is directed to execute a personal bond before the Superintendent of Prison, Central Prison, Vellore and on execution of the same, the Superintendent of Prison, Central Prison, Vellore shall release the petitioner forthwith;

(ii)After coming out of the prison, the petitioner shall deposit a sum of Rs.1,50,000/- (Rupees One Lakh Fifty Thousand only) to the credit of C.C.No.12 of 2019 on the file of Judicial Magistrate, Fast Track Court (Magisterial Level) at Thiruvannamalai on or before 12.09.2024;

(iii) Thereafter, the petitioner shall execute a bond for Rs.5,000/- with two sureties, each for a likesum to the



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satisfaction of the Judicial Magistrate, Fast Track Court
(Magisterial Level) at Thiruvannamalai, within a period of 15
days thereafter.

(iv)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 Book to ensure their identities.

8. Accordingly, this Criminal Miscellaneous Petition is ordered.

9.This conditional order to be complied with strictly. Post the matter on
13.09.2024 'For Reporting Compliance'.

03.09.2024
(2/2)

Index : Yes/No
Internet : Yes/No
Speaking order/Non speaking order
Neutral citation : Yes/No
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Note: Issue order copy on 04.09.2024



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To

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- 1.The Additional District and Sessions Judge,
Thiruvannamalai.
- 2.The Judicial Magistrate,
Fast Track Court (Magisterial Level),
Thiruvannamalai.
- 3.The Superintendent,
Central Prison,
Vellore.
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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