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*Crl.M.P.No.12278 of 2024
in Crl.R.C.No.615 of 2022*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.09.2024

CORAM:

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

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in
Crl.R.C.No.615 of 2022

Atul Shah
Proprietor
M/s.Sri Mahalakshmi Spinners,
No.52, 1st Floor,
P.M.Swamy Colony Street No.1,
R.S.Puram, Coimbatore – 641 002. ... Petitioner/Accused

Vs.

1.M/s.Jaishri Trading Corporation,
Rep by Mr.Jasraj M.Khandelwal,
No.12-A, Vijay Centre,
No.65, Oppanakara Street,
Coimbatore.

2.State Rep by
The Public Prosecutor,
Coimbatore. ... Respondents

PRAYER: Criminal Miscellaneous Petition filed under Section 397(1) of Cr.P.C. to suspend the sentence imposed vide C.C.No.142 of 2015 on the file of learned Judicial Magistrate, FTC-I Magisterial Level at Coimbatore dated 04.02.2021 for an offence under Section 138 of the Negotiable Instruments Act and confirmed in Crl.A.No.51 of 2021 on the file of III Additional District and Sessions Judge at Coimbatore dated 07.02.2022 and enlarge the petitioner on bail pending disposal of the above Criminal Revision.



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For Petitioner : Mr.C.Arun Kumar

For Respondent-1 : Mr.A.Ashok Kumar

For Respondent-2 : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence imposed vide C.C.No.142 of 2015 on the file of learned Judicial Magistrate, FTC-I Magisterial Level at Coimbatore dated 04.02.2021 for an offence under Section 138 of the Negotiable Instruments Act and confirmed in Crl.A.No.51 of 2021 on the file of III Additional District and Sessions Judge at Coimbatore dated 07.02.2022 and enlarge the petitioner on bail pending disposal of the above Criminal Revision Case.

2.The petitioner/accused in C.C.No.142 of 2015 was convicted by the Trial Court by judgment dated 04.02.2021 for offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo one year simple imprisonment and to pay the cheque amount of Rs.8,68,349/- as compensation. Aggrieved against the same, the petitioner preferred an appeal before the learned III Additional District and Sessions Judge, Coimbatore.



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The learned Sessions Judge, by judgment dated 07.02.2022, confirmed the conviction and sentence of the trial Court, against which, the petitioner preferred a revision before this Court in Crl.R.C.No.615 of 2022 along with the instant miscellaneous petition seeking suspension of sentence and bail.

3.During trial, on the side of the prosecution, PW1 and PW2 examined and marked Exs.P1 to P13. On the side of the defence the petitioner examined as DW1 and marked Exs.D1 to D3. 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.

4.The contention of the learned counsel for petitioner is that the petitioner has been implicated in this case for the cheque, which was given as security for a business transaction of his wife. He further submitted that this fact is also not seriously disputed by the respondent. He further submitted that the petitioner arrested on the conviction warrant on 10.08.2024 and now he is in confinement at Central Prison, Coimbatore. While preferring an appeal, the petitioner deposited 20% of the cheque amount, i.e.,

Rs.1,73,670/- on 09.04.2021 as per the order in Crl.M.P.No.840 of 2021 and



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he is ready to deposit 30% of the cheque amount, i.e., Rs.2,60,000/- within a period of one week.

5.The learned counsel for respondent opposed the contention of the petitioner stating that cheque is of the year 2014. It is almost 10 years, the respondent/complainant is yet to see the colour of the coin. Further the petitioner had been protracting the trial by one way or other. Earlier on two occasions the petitioner filed quash petitions before this Court. Initially, the petitioner filed Crl.O.P.No.18028 of 2015 and took a stand that he is the Proprietor of M/s.Sri Mahalakshmi Spinners, which has got no business with the respondent and it was only petitioner's wife, who was having some business transaction in the name of M/s.Sri Mahalakshmi Durvesh Textiles, for which, the petitioner issued the cheque. This plea of the petitioner was negatived and the quash petition was dismissed on 27.07.2015. Suppressing the same, the petitioner preferred a second quash petition in Crl.O.P.No.3140 of 2017 and this Court dismissed the quash petition and imposed a cost of Rs.25,000/- to the Coimbatore Bar Association for suppressing the earlier quash petition. The respondent is not aware as to whether the cost has been paid or not. He further submitted that the amount of Rs.1,73,670/- may be permitted to be withdrawn by the respondent.



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6.Considering the submissions made and on perusal of the materials and also the petitioner coming forward to deposit 30% of the cheque amount, i.e., Rs.2,60,000/- before the trial Court within a period of one week, 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 deposit a sum of Rs.2,60,000/- (Rupees Two Lakhs Sixty Thousand only) to the credit of C.C.No.142 of 2015 on the file of Judicial Magistrate, Fast Track Court No.I at Magisterial Level, Coimbatore within a period of one week from the date of receipt of a copy of this order;

(ii) On such deposit being made, the petitioner/accused 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 learned Judicial Magistrate, Fast Track Court No.I at Magisterial Level, Coimbatore.

(iii) 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.



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(iv) The petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m., 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.

(v) The respondent is permitted to withdraw the amount of Rs.1,73,670/-, which was deposited earlier and the amount of Rs.2,60,000/- to be deposited by the petitioner, by filing appropriate petition before the Lower Court giving an undertaking that this withdrawal is subject to the outcome of the above revision petition.

8. Accordingly, this Criminal Miscellaneous Petition is ordered.

9. Post the matter on 17.09.2024 'For Reporting Compliance'.

03.09.2024

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 III Additional District and Sessions Judge,
Coimbatore.
- 2.The Judicial Magistrate,
Fast Track Court No.I at Magisterial Level,
Coimbatore.
- 3.The Superintendent,
Central Prison,
Coimbatore.
- 4.The Public Prosecutor,
Coimbatore
- 5.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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