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Crl.M.P.Nos.17202 and 17203 of 2023 In Crl.R.C.No.1818 of 2023

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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 the cheque amount of Rs.6,00,000/- to the complainant within three months in default to undergo three months S.I. by the learned Judicial Magistrate, Kotagiri under judgment dated 09.08.2018 in S.T.C.No.406 of 2014. The conviction and sentence imposed by the trial Court was confirmed by the learned Sessions Judge of Magalir Neethimandram (FTMC) Udhagamandalam, under judgment in C.A.No.53 of 2018 dated 11.07.2023. Hence, the petitioner seeks suspension of sentence.

2.Learned counsel for 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



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represented that there is no precondition requiring the petitioner's 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) 1172030)** and that of the **IBRAHIM VS STATE OF KERALA (1979 KLT 857)** are relied upon in this regard.

3.Heard the submissions made by the learned Government Advocate (Crl. Side).

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

5.Therefore, in view of the fact that there are several infirmities in the prosecution case and there are arguable points involved in the



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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.

6. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to deposit 50% of the cheque amount i.e., a sum of Rs.3,00,000/- (Rupees Three Lakhs Only) within a period of two weeks from the date of receipt of a copy of this order to the credit of S.T.C.No.406 of 2014 on the file of the learned Judicial Magistrate, Kotagiri, 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 Judicial Magistrate Court, Kotagiri 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.



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7.The criminal miscellaneous petition in Crl.M.P.No.17202 of 2023 is ordered accordingly.

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8.In view of the order passed in Crl.M.P.No.17202 of 2023, the petition for exemption to surrender in Crl.M.P.No.17203 of 2023 is dismissed.

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29.07.2024

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