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Crl.M.P.Nos.16027 & 16028 of 2024 in Crl.R.C.No.1953 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.Nos.16027 & 16028 of 2024
in Crl.R.C.No.1953 of 2024

B.Nanjan

... Petitioner

Vs.

1. The United Planters Association of Southern India,
Rep. by its Secretary,
Mr.Sanjith

2. The State rep. by
The Public Prosecutor,
Udhagamandalam.

... Respondents

PRAYER in Crl.M.P.No.16027 of 2024: Criminal Miscellaneous Petition filed under Section 430 of BNSS, to suspend the sentence imposed in Crl.A.No.5 of 2023 dated 22.01.2024 on the file of the learned Sessions Judge, Court of Sessions Division of the Nilgiris District at Udhagamandalam by confirming the Judgment dated 16.12.2022 passed in S.T.C.No.71 of 2018 by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Coonoor, till the disposal of above Criminal Revision Revision.

PRAYER in Crl.M.P.No.16028 of 2024: Criminal Miscellaneous



Petition filed under Section 528 of BNSS, to grant an order of exemption to surrendering before the trial Court in the common judgment passed in C.A.Nos.5, 6 and 7 of 2023 dated on the file of the learned Sessions Judge, Court of Sessions Division of the Nilgiris District at Udhagamandalam confirming the Judgment dated 16.12.2022 passed in S.T.C.No.71 of 2018 by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Coonoor, till the disposal of above Criminal Revision Revision.

For Petitioner : Mr.A.Bobbie

For Respondents : Mr.K.V.Sridharan (for R1)
Mr.V.J.Priyadarsana (For R2)
Government Advocate (Crl.Side)

COMMON ORDER

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner/accused by judgment dated 16.12.2022 passed in S.T.C.No.71 of 2018 by the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Coonor, and confirmed by the learned Sessions Judge, Court of Sessions Division of the Nilgiris District at Udhagamandalam, vide common Judgment dated 22.01.2024 in Crl.A.Nos.5, 6 and 7 of 2023 and enlarge the petitioner on bail and to exempt the petitioner from surrendering before the trial Court, pending disposal of the above revision.



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2. The case of the 1st respondent/complainant is that towards the discharge of his liability the petitioner has issued a cheque for Rs.1,00,000/- to the respondent; that when the cheque was presented for collection, it was returned unpaid, for the reason 'Funds Insufficient'; and that inspite of statutory notice, the petitioner did not pay the cheque amount.

3. The petitioner was convicted by the trial Court for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for six months with fine of cheque amount i.e. Rs.1,00,000/-, which the complainant is entitled to get as compensation under Section 357 (3) of Cr.P.C., in default to undergo simple imprisonment for two months. On appeal, the said conviction and sentence was confirmed by the lower Appellate Court.

4. The learned counsel for the petitioner would submit that the 1st respondent had not established that the petitioner is liable to pay the cheque amount; that the 1st respondent had not produced proper statement of accounts; that the Courts below had not appreciated the



evidence in the correct perspective; that to show his *bona fides*, he is willing to deposit 50% of the cheque amount; and prayed for suspension of sentence.

5. The learned Government Advocate (Crl.side) appearing for the 2nd respondent/State, *per contra*, would submit that the prosecution has established its case beyond reasonable doubt; that therefore the petitioner has not made out any ground for exemption from surrendering and suspension of sentence and prayed for dismissal of both the petitions.

6. Heard the learned counsel for the petitioner; learned counsel for the 1st respondent/complainant and the learned Government Advocate (Crl.Side) appearing for the 2nd respondent/State and perused the records.

7. This Court finds that the submission made by the learned counsel for the petitioner needs deliberation. Since there are arguable points in the above revision and the question as to whether the cheque was issued in discharge of legally enforceable debt, has to be decided in the revision, this Court is inclined to suspend the sentence imposed on the petitioner/accused and exempt him from surrendering before the trial



Court.

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8. Accordingly, this Court grants the relief of suspension of sentence imposed on the petitioner and exempt the petitioner from surrendering before the trial court, on the following conditions till the disposal of the above Criminal Revision:

(i) The petitioner/accused is directed to deposit 50% of the cheque amount i.e., Rs.50,000/- [Rupees Fifty Thousand Only], within a period of four weeks from the date of receipt of a copy of this order to the credit of S.T.C.No.71 of 2018 on the file of the learned Judicial Magistrate, Fast Track Court at Magisterial Level, Coonoor;

(ii) On such deposit being made, the trial Court shall redeposit the said amount in a Fixed Deposit Account, in any one of the Nationalized Banks, renewable thereafter periodically. The disbursal of this amount shall be decided at the culmination of the Criminal Revision Case;

(iii) Thereafter, the sentence of imprisonment alone imposed on the petitioner/accused shall be suspended, on his executing a bond a bond for a sum of Rs.10,000/- with two sureties each for a likesum to the satisfaction of the Judicial Magistrate, Fast Track Court at Magisterial Level,



Coonoor;

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(iv) The petitioner and the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity;

(v) The petitioner shall appear before the trial Court on the first working day of every 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 any 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; and

(vi) On the failure of the petitioner/accused, depositing the said amount, it is open to the trial Court to commit the petitioner/accused into custody for undergoing the sentence.

21.11.2024

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To



Crl.M.P.Nos.16027 & 16028 of 2024 in Crl.R.C.No.1953 of 2024

1. The Sessions Judge,
Court of Sessions Division of the Nilgiris District,
Udhagamandalam.

2. The Judicial Magistrate,
Fast Track Court at Magisterial Level,
Coonoor.

3. The Public Prosecutor,
Udhagamandalam.

4. The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J.

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in Crl.R.C.No.1953 of 2024

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