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Crl.M.P.No.16914 of 2023 In Crl.R.C.No.1785 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 six months S.I. and to pay the cheque amount of Rs.22,25,000/- as compensation to the complainant within a period of two months in default to undergo two weeks S.I. by the learned Judicial Magistrate, Fast Track Court (Magisterial Level – II), Poonamallee under judgment dated 30.12.2020 in S.T.C.No.268 of 2016. The conviction and sentence imposed by the trial Court was confirmed by the III Additional District and Sessions Court, Tiruvallur at Poonamallee under judgment in Criminal Appeal No.08 of 2021 dated 23.06.2023. 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



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between the evidence of the prosecution witnesses. It is further 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) 1380)** and that of the **IBRAHIM VS STATE OF KERALA (1979 KLT 857)** are relied upon in this regard.

3.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.

4.Therefore, in view of the fact that there are several infirmities in the prosecution case and there are arguable points involved in the revision, as contended by learned counsel for petitioner, this Court is of the considered view that the petitioner herein is entitled to the relief



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of grant of suspension of sentence.

5. 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.11,12,500/- (Rupees Eleven Lakhs Twelve Thousand and Five Hundred 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.268 of 2016 on the file of the learned Judicial Magistrate, Fast Track Court (Magisterial Level – II), Poonamallee, 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 learned Judicial Magistrate (FTC Magisterial Level) at Poonamallee 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.

6. The criminal miscellaneous petition is ordered accordingly.



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