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*Crl.M.P.Nos.15125 & 15127 of 2024
in Crl.R.C.No.1839 of 2024*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 06.11.2024

Coram:

The Honourable Mr.Justice SUNDER MOHAN

**Crl.M.P.Nos.15125 & 15127 of 2024
in Crl.R.C.No.1839 of 2024**

A.Shanthi ... Petitioner in both M.Ps

Versus

M/s.Sri Ganapathi Enterprises,
Represented by its Proprietor
Mr.Shashi Gupta,
No.38, Marshalls Road,
Egmore, Chennai – 600 008.

... Respondent in both M.Ps

Prayer in Crl.M.P.No.15125 of 2024 in Crl.R.C.No.1839 of 2024:

This Criminal Miscellaneous Petition is filed under Sections 397(1) of Cr.P.C praying to suspend the sentence of imprisonment imposed on the petitioner in the judgment dated 09.07.2024 made in C.A.No.291 of 2022 on the file of the learned XVIII Additional City Civil Court, Chennai confirming the judgment dated 28.09.2022 made in C.C.No.6842 of 2016 on the file of the learned Metropolitan Magistrate, Fast Track Court – I, Egmore @ Allikulam, Chennai and enlarge the petitioner on bail pending disposal of the above Criminal Revision Petition before this Court.

Prayer in Crl.M.P.No.15127 of 2024 in Crl.R.C.No.1839 of 2024:



*Crl.M.P.Nos.15125 & 15127 of 2024
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This Criminal Miscellaneous Petition is filed under Section 482 of Cr.P.C praying to grant an order of exemption from surrendering before the trial Court pursuant to the judgment dated 09.07.2024 made in C.A.No.291 of 2022 on the file of the learned XVIII Additional City Civil Court, Chennai confirmed through judgment dated 28.09.2022 made in C.C.No.6842 of 2016 on the file of the learned Metropolitan Magistrate, Fast Track Court – I, Egmore @ Allikulam, Chennai pending disposal of the above Revision Petition before this Court.

For Petitioner in both M.Ps : Mr.N.S.Suganthan
For Respondent in both M.Ps : Mr.S.Balaji,
Government Advocate (Crl.Side)

COMMON ORDER

The Criminal Miscellaneous Petition No.15125 of 2024 has been filed seeking to suspend the sentence imposed on the petitioner/accused by judgment dated 28.09.2022 passed in C.C.No.6842 of 2016 by the learned Metropolitan Magistrate, Fast Track Court-I, Egmore @ Allikulam, Chennai and confirmed by the learned XVIII Additional Sessions Judge, City Civil Court at Chennai vide judgment dated 09.07.2024 in C.A.No.291 of 2022, pending disposal of the Criminal Revision Case. Further, seeking exemption from surrendering before the trial Court, the petitioner has filed Criminal Miscellaneous Petition No.15127 of 2024.



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2. The trial Court had convicted the petitioner/accused for the offence under Section 138 of Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act') and sentenced him to undergo 2 years Simple Imprisonment and to pay double the cheque amount as compensation within a period of 1 month, in default, to undergo 6 months Simple Imprisonment.

3. The case of the respondent/complainant is that the petitioner and her husband had borrowed a sum of Rs.22,50,000/- from the respondent company and towards discharge of the said liability, they had issued a cheque for the said amount; that the said cheque was presented for collection and was returned with the endorsement, "Payment Stopped by Drawer"; and that inspite of statutory notice, the petitioner did not make payment.

4. The learned counsel for the petitioner/accused would submit that the respondent/complainant has not established the alleged borrowing by the petitioner/accused; that the husband of the petitioner and the respondent are distant relatives and had business transactions in the past; and that a cheque issued earlier has been misused by the respondent.



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5. This Court finds force in the submissions made by the learned counsel for the petitioner and is of the view that the question as to whether the cheque was issued for a legally enforceable debt or liability has to be examined in the above revision. That apart, admittedly, the husband of the petitioner had business transactions with the respondent and in fact for a cheque dishonoured by the husband of the petitioner, he was convicted and he had preferred Crl.R.C.No.1732 of 2024, which is pending before this Court.

6. Considering the above facts and circumstances of the case and having regard to the submissions made by the learned counsel for the petitioner/accused, this Court is inclined to suspend the substantive sentence imposed on the petitioner/accused and exempt her from surrendering before the trial Court, subject to certain conditions.

7. Accordingly, these Criminal Miscellaneous Petitions are allowed and till the disposal of the Criminal Revision Case, the reliefs of suspension of sentence and exemption from surrendering before the trial Court are granted on the following conditions:



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(i) The petitioner/accused shall deposit 25% of the disputed cheque amount before the trial Court, within a period of four weeks from the date of receipt of a copy of this order;

(ii) On such deposit being made, the trial Court shall re-deposit 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 imposed on the petitioner/accused shall be suspended on condition that she 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 Metropolitan Magistrate, Fast Track Court – I, Egmore @ Allikulam, Chennai;

(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 Card or Bank Pass Book to ensure their identity;

(v) The petitioner/accused shall appear before the trial Court



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at 10.30 a.m on the first working day of every English Calendar month, until the disposal of the revision case and if she is not able to appear before the trial Court on any day, she shall make arrangements to file an application under Section 317 of Cr.P.C and shall appear before the trial Court on any other day in lieu of her absence, as directed by the trial Court.

(vi) If the petitioner/accused fails to deposit the said amount, it is open to the trial Court to commit the petitioner/accused into custody for undergoing the sentence.

06.11.2024

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Index : Yes/No

Speaking Order (or) Non-Speaking Order

Issue order copy by 11.11.2024

To

1.XVIII Additional Judge,
City Civil Court,
Chennai

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2. Metropolitan Magistrate,
Fast Track Court – I,
Egmore @ Allikulam, Chennai

3. The Public Prosecutor,
Madras High Court,
Chennai – 600 104.

SUNDER MOHAN, J.

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