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Crl.M.P.No.17524 & 17549 of 2024
in Crl.R.C.Nos.2245 & 2249 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.17524 & 17549 of 2024
in
Crl.R.C.Nos.2245 & 2249 of 2024

1. P.Murugesan

2. M.Hemalatha

... Petitioners/Accused 1 & 2

in both cases

Vs.

D.Kannan

... Respondent in both cases

PRAYER in Crl.M.P.No.17524 of 2024: Criminal Miscellaneous Petition filed under Section 438 (1) of BNSS, to suspend the sentence imposed on the petitioners by judgment dated 13.07.2022 passed in C.C.No.3088 of 2013 by the learned Metropolitan Magistrate, Fast Track Court No.IV, Chennai, and modified by judgment dated 27.09.2024 made in C.A.No.91 of 2023 by the learned XIX Additional Judge, City Civil Court, Chennai, on till the disposal of above Criminal Revision Revision.

PRAYER in Crl.M.P.No.17549 of 2024: Criminal Miscellaneous Petition filed under Section 438 (1) of BNSS, to suspend the sentence imposed on the petitioners by judgment dated 13.07.2022 passed in C.C.No.3088 of 2013 by the learned Metropolitan Magistrate, Fast Track Court No.IV, Chennai, and modified by judgment dated 27.09.2024 made in C.A.No.63 of 2023 by the learned XIX Additional Judge, City Civil Court, Chennai, on till the disposal of above Criminal Revision Revision.

For Petitioners : Mr.S.F.Mohamed Yousuf



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ORDER

These Criminal Miscellaneous Petitions have been filed seeking to suspend the sentence imposed on the petitioners/A1 & A2 by judgment dated 13.07.2022 passed in C.C.No.3088 of 2013 by the learned Metropolitan Magistrate, Fast Track Court No.IV, George Town, Chennai, and modified by common judgment dated 27.09.2024 in C.A.Nos.63 & 91 of 2023, by the learned XIX Additional Judge, City Civil Court, Chennai, pending disposal of the Criminal Revision Case.

2. It is the case of the respondent/complainant that towards discharge of liability, relating to purchase of dhal from the respondent, the petitioners have issued five cheques totalling to Rs.27,34,500/- to the respondent and when the said cheques were presented for collection, the same were returned for the reason 'Account Closed' and inspite of the statutory notice, the petitioners did not pay the cheque amount.

3. The petitioners were convicted by the trial Court for the offence under Section 138 of the Negotiable Instruments Act and sentenced as



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follows:

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Accused No.	Sentence imposed
A1	To undergo simple imprisonment for three months and to pay Rs.1,00,000/- as compensation to the complainant.
A2	To undergo simple imprisonment for three months and to pay Rs.27,34,500/- as compensation to the complainant.

4. Challenging the above conviction and sentence, the petitioners/accused preferred Crl.A.No.91 of 2023 and seeking enhancement of the punishment and compensation amount, the respondent preferred Crl.A.No.63 of 2023. The appellate Court, vide common judgment dated 27.09.2024 dismissed the appeal filed by the petitioners/accused and allowed the appeal filed by respondent, enhancing the sentence imposed on the petitioners/accused from three months SI to one year SI. Compensation awarded by the trial Court was confirmed.

5. Aggrieved by the above judgment of the appellate Court, the petitioners/accused have preferred Crl.R.C.Nos.2245 & 2249 of 2024 and pending revisions have sought for suspension of sentence in these



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Criminal Miscellaneous Petitions.

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6. The learned counsel for the petitioners/accused submitted that even according to the complaint, the purchase was made in the year 2011 and the cheques were issued in the year 2013; that the evidence adduced before the trial Court would reveal that the cheques were given as security; that the petitioners are not liable to pay the cheque amount; that the petitioners have rebutted the statutory presumption; that the petitioners have already deposited 20% of the cheque amount i.e. Rs.5,46,900/- as ordered by the trial Court, while suspending the sentence imposed upon the petitioners; that to show their *bona fides*, they are willing to deposit further sum equivalent to 20% of the cheque amount; and prayed for suspension of sentence.

7. Considering the fact that there are arguable points raised in the revision; that the revision is not likely to be taken up in the near future; and that the petitioners are willing to deposit 20% of the cheque amount, this Court is inclined to suspend the sentence imposed on the petitioners herein/A1 and A2.



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8. Accordingly, these Criminal Miscellaneous Petitions are allowed and till the disposal of the Criminal Revision cases, the sentence imposed upon the petitioners/A1 and A2 by the trial Court, is suspended on the following conditions:

(i) The petitioners/A1 and A2 shall deposit 20% of the compensation amount i.e., Rs.5,46,900/- [Rupees Five Lakhs Forty Six Thousand and Nine Hundred Only), to the credit of C.C.No.3088 of 2013 on the file of the learned Metropolitan Magistrate, FTC-IV, George Town Chennai, 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 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 Cases;

(iii) Thereafter, the sentence of imprisonment alone imposed on the petitioners/A1 and A2 shall be suspended, on their executing a bond for a sum of Rs.10,000/- with two sureties each for a likesum to the satisfaction of the learned Metropolitan Magistrate, FTC-IV, George Town Chennai;



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(iv) The petitioners 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 petitioners 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 they are not able to appear before the trial Court on any day, they 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 their absence, as directed by the trial Court; and

(vi) On the failure of the petitioners/A1 and A2, depositing the said amount, it is open to the trial Court to commit the petitioners/accused into custody for undergoing the sentence.

11.12.2024

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Issue order copy by 16.12.2024

Upload the order copy forthwith.



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SUNDER MOHAN, J.

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To

1.The Metropolitan Magistrate,
Fast Track Court No.IV, Chennai.

2.The XIX Additional Judge,
City Civil Court, Chennai.

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