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Crl.M.P.No.15265 of 2024 in Crl.R.C.No.1865 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.No.15265 of 2024
in Crl.R.C.No.1865 of 2024

1.S.Jagdish ... Petitioner

Vs.

Mr.R.Subramanian, (Deceased)

Mr.s.Arunraj ... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 397 & 401 of Cr.P.C., and 438 and 442 of BNSS, to suspend the sentence imposed in Crl.A.No.808 of 2023 dated 05.08.2024 on the file of the learned XVIII Additional City Civil and Sessions Court at Chennai by confirming the Judgment dated 01.12.2023 passed in C.C.No.8554 of 2018 by the learned Metropolitan Magistrate, Fast Track Court-I, Egmore @ Allikulam, Chennai, till the disposal of above Criminal Revision Revision.

For Petitioner : Mr.R.Arunkumar

ORDER

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner/accused by judgment



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dated 01.12.2023 passed in C.C.No.8554 of 2018 by the learned Metropolitan Magistrate, Fast Track Court-I, Egmore @ Allikulam, Chennai and confirmed by the learned XVIII Additional City Civil and Sessions Court at Chennai vide judgment dated 05.08.2024 in C.A.No.808 of 2023, pending disposal of the Criminal Revision Case.

2. It is the case of the respondent/complainant that the petitioner had issued three cheques, each for Rs.1,00,000/-, totally Rs.3,00,000/-, towards the discharge of his liability and when the said cheques are presented for collection, they were returned with the endorsement 'funds insufficient' and 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 one year simple imprisonment with fine of cheque amount, which the complainant is entitled to get as compensation under Section 357 (3) of Cr.P.C., in default to undergo simple imprisonment for one month. On appeal, the said conviction and sentence was confirmed by the lower Appellate Court. Therefore, challenging the concurrent finding



of the courts below, the petitioner has preferred revision and pending revision, he seek for suspension of sentence.

4. The learned counsel for the petitioner would submit that the Courts below have not considered the statement of account [Ex.D3], produced on the side of the petitioner in proper perspective; that the said document would reveal that the cheques related to the period much prior to the alleged date of lending by the respondent; and that the respondent had misused the cheques given as security earlier and prayed for suspension of sentence.

5. 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 cheques were 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. Further, the petitioner is willing to deposit 20% of the cheque amount.

6. Accordingly, this Criminal Miscellaneous Petition is allowed



and till the disposal of the Criminal Revision case, the sentence imposed upon the petitioner/accused by the trial Court, is suspended on the following conditions:

(i) The petitioner/accused is directed to deposit 20% of the cheque amount i.e.,Rs.60,000/- [Rupees Sixty Thousand Only], 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 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 XVIII Additional City Civil and Sessions Court at Chennai;

(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;

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(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.

06.11.2024

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Issue order copy by .11.2024
Upload the order copy forthwith.

To

1. The XVIII Additional City Civil and Sessions Court,
Chennai.

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



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SUNDER MOHAN, J.

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