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Crl.M.P.Nos.15572 & 15574 of 2024 in Crl.R.C.No.1902 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2024

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THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.M.P.Nos.15572 & 15574 of 2024

in

Crl.R.C.No.1902 of 2024

1.J.Ellaiyan

2.E.Gayathri

... Petitioners

Vs.

1.A.Salam Sulaiman

2.Sri Ravi Travels (Chennai) Pvt.Limited,

Represented by its Liquidator,

Official Liquidator, Corporate Bhavan,

Kamarajar Salai,

Chennai – 600 001.

... Respondents

PRAYER: Criminal Miscellaneous Petitions filed under Section 397 (1) Cr.P.C., under Section 438 (1) of BNSS, to suspend the sentence of one year simple imprisonment and the fine made in judgment dated 05.08.2024 in Crl.A.No.18 of 2022, on the file of the II Additional Sessions Judge City Civil Court, Chennai, confirming the conviction and sentence in the Judgment dated 30.11.2021 made in C.C.No.1740 of 2009 filed on the file of the learned FTC – II, Metropolitan Magistrate, Egmore at Allikulam, Chennai - 3, pending disposal of the above criminal revision and to exempt the petitioner from surrendering before the trial Court.



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For Petitioners : Mr.V.Venkadasalam
For R1 : No appearance
For R : Mr.S.Balaji
Government Advocate (Crl.Side)

ORDER

These Criminal Miscellaneous Petitions have been filed seeking to suspend the sentence of one year simple imprisonment and the fine passed in judgment dated 05.08.2024, in Crl.A.No.18 of 2022, on the file of the II Additional Sessions Judge City Civil Court, Chennai, confirming the conviction and sentence in the judgment dated 30.11.2021, passed in C.C.No.1740 of 2009, on the file of the learned FTC – II, Metropolitan Magistrate, Egmore at Allikulam, Chennai – 3 and to exempt the petitioners from surrendering before the trial court pending disposal of the above revision.

2.It is the case of the prosecution that the petitioners/A2 & A3 are the Directors of the first accused company and that the first accused company had issued a cheque for a sum of Rs.4,90,000/- towards discharge of its liability to the first respondent; and that when the cheque was presented for collection, it was returned as “payment stopped by drawer”; and that inspite of the issuance of the statutory notice, neither the company nor the petitioners made the payment of the cheque amount.



Hence the complaint.

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3.The petitioners were found guilty for the offence under Section 138 of N.I.Act and the trial Court had convicted the petitioners for the offences under Sections 255 (2) Cr.P.C. and sentenced to undergo simple imprisonment for a period of one year. Further, the accused 1 to 3 are directed to pay the compensation Rs.4,90,000/- to the first respondent/complainant under Section 357 (3) Cr.P.C. r/w Section 138 and 142 of N.I.Act, in default, the accused shall undergo further period of three months simple imprisonment as default sentence. Time for payment of compensation is one month. On appeal, the judgment of the trial Court was confirmed.

4.The learned counsel for the petitioners would submit that the first accused company was wound up during the pendency of the trial. Therefore, the conviction recorded by the Courts below cannot be sustained; and that even according to the first respondent, out of the cheque amount a sum of Rs.1,75,000/- was admittedly received by the first respondent and hence, the sentence imposed on the petitioners may be suspended. He further submitted that at the time of the hearing the



appeal, the petitioners had deposited a sum of Rs.98,000/- and now they are willing to deposit a sum of Rs.1,00,000/- to the credit of the C.C.No.1740 of 2009, on the file of the learned FTC – II, Metropolitan Magistrate, Egmore at Allikulam, Chennai.

5.Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.Side) for R2.

6.Considering the fact that the petitioners have raised arguable points, which requires consideration in the above criminal revision, this Court is inclined to suspend the sentence and exempt the petitioners from surrendering.

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

- (i) The petitioners/accused are directed to jointly deposit Rs.1,00,000/- [Rupees One Lakh Only], within a period of four weeks from the date of receipt of a copy of this order to the credit of the C.C.No.1740 of 2009, filed on



the file of the learned FTC – II, Metropolitan Magistrate,
Egmore at Allikulam, Chennai;

(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 petitioners/accused shall be suspended, on they executing a bond for a sum of Rs.10,000/- each with two sureties each for a likesum to the satisfaction of learned FTC – II, Metropolitan Magistrate, Egmore at Allikulam, Chennai;

(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 he is not able to appear before the trial Court on any day, they shall make arrangements to file an application under Section 317



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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 petitioners/accused, depositing the said amount, it is open to the trial Court to commit the petitioners/accused into custody for undergoing the sentence.

08.11.2024

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Issue order copy by 11.11.2024

Upload the order copy forthwith.

To

1.FTC – II, Metropolitan Magistrate,
Egmore, Allikulam, Chennai – 3.

2.II Additional Sessions Judge,
City Civil Court, Chennai.

3.The Public Prosecutor,
High Court Madras.



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SUNDER MOHAN, J.

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08.11.2024
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