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Crl.R.C.No.2114 of 2023 etc. batch

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2024

CORAM:

THE HON'BLE **MR.JUSTICE M. NIRMAL KUMAR**

Crl.MP Nos.19263 to 19267, 19255, 19257,
19259 to 19261, 19269 and 19271 of 2023
and

Crl.R.C.Nos.2114, 2115, 2117 to 2120 of 2023

Perumal : Petitioner in all cases

Vs.

State represented by
Inspector of Police,
C.C.I.W., CID,
Salem (Cr.No.11/1993)

: Respondent in all cases

PRAYER:

(i) Crl.MP Nos.19265,19257, 19269, 19267, 19264, 19260 of 2023
filed to grant exemption from surrender before the Trial Court in
CA Nos.119, 122, 120, 121, 118, 117 of 2023 passed by the I
Additional District Sessions Judge, Salem, dated 06.07.2023;

(ii)Crl.MP Nos.19263, 19255, 19271, 19266, 19261, 19259 of 2023
filed to suspend the sentence imposed on the petitioner in CA
Nos.119, 122, 120, 121, 118, 117 of 2023 passed by the I
Additional District Sessions Judge, Salem, dated 06.07.2023



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For Petitioner : Mr.R.T.Vijayaraaghavan

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor

COMMON ORDER

The petitioner has filed Crl.MP Nos.19265,19257, 19269, 19267, 19264, 19260 of 2023, to grant him exemption from surrender before the Trial Court in CA Nos.119, 122, 120, 121, 118, 117 of 2023 passed by the I Additional District Sessions Judge, Salem, dated 06.07.2023 pending disposal of the above revisions.

2. The petitioner has come up with Crl.MP Nos.19263, 19255, 19271, 19266, 19261, 19259 of 2023 to suspend the sentence imposed on him in CA Nos.119, 122, 120, 121, 118, 117 of 2023 passed by the I Additional District Sessions Judge, Salem, dated 06.07.2023

3. The petitioner, the first accused before the trial Court, was originally stood charged for offence under Sections 408 r/w 109 IPC in CC Nos.78, 88 of 1999; Sections 408, 467, 471, 408 r/w 471 IPC in CC No.87, 89 of 1999; Sections 420, 408, 467 and 471 IPC in CC No.80 of 1999; Sections 408, 467, 408 r/w 109 IPC in CC No.79 of 1999 before the learned Judicial Magistrate No.1, Salem. After trial, the learned



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Judicial Magistrate acquitted the petitioner of all charges. Second accused passed away during trial and third accused passed away during the pendency of the appeal. Hence the charges against him stood abated.

4. Aggrieved by the order of acquittal, the State preferred appeals before the I Additional District Sessions Judge, Salem, in CA Nos.119, 122, 120, 121, 118, 117 of 2023. Vide judgment dated 06.07.2023, the order of the learned Judicial Magistrate was reversed and the petitioner was convicted and sentenced as under:

(i) convicted under Section 408 IPC and sentenced to undergo R.I. For five years in CA Nos.122, 117, 118, 119, 199, 120 and 121 of 2013.

(ii) convicted under Section 467 and sentenced to undergo RI for five years, in CA No.118 of 2023.

The sentences were ordered to run concurrently.

5. The petitioner was also directed to pay a fine of Rs.10,000/- in default to undergo six months rigorous imprisonment for offence under



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Section 408 of IPC.

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6. Challenging the conviction and sentence imposed on him, the petitioner has filed the present revision cases and miscellaneous petitions seeking suspension of sentence and exemption from surrender.

7. In continuation of the earlier order passed by this Court on 11.03.2024, the petitioner had deposited the balance amount of Rs.1,71,070/- to the District Central Co-operative Bank, Salem.

8. The petitioner is arrayed as the first accused in all the cases. The case against the petitioner is that during the period 16.11.1989 to 15.11.1990, he was working as Senior Assistant in Salem Central Cooperative Bank and he was entrusted with the funds of the bank. During this period, the petitioner had not properly accounted the receipts and payments in the bank registers. Along with the second accused, on 16.11.1989, a disposal receipt case has been recorded with higher amount and this improper accounting has been purposely done, along with one Dravidamani, who is no more. They have misappropriated huge sums during the period. Hence, cases were registered for offences as mentioned above in various calendar cases.



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During trial, P.W.1 to P.W.11 examined and Exs.P-1 to P-43 were marked. On conclusion of the trial, the trial court had acquitted the petitioner, finding that the petitioner had for the celebration of All India Cooperative Week, some expenditure which was adjusted with the bank accounts. Further, the petitioner had not misappropriated any amount for his own use and what was done was only book adjustment. During 81 enquiry, the signature of the petitioner was doubted but it was not sent for any handwriting expert to prove that the petitioner had created forged documents. On that ground, the petitioner was acquitted. Aggrieved against the same, the State has preferred appeals before the I Additional District Sessions Judge, Salem.

9. Vide judgment dated 06.07.2023, the learned I Additional District Sessions Judge, Salem, reversed the finding of the Trial Court and convicted the petitioner.

10. The contention of the petitioner is that the petitioner is now aged about 80 years. Though case has been initiated against three persons of the bank, one of the accused passed away during trial and one more passed away during the pendency of the appeal. Now, the petitioner alone is surviving. The petitioner's role is very limited viz., only supervisory cadre. He only goes by the records and documents



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which have been put up by his subordinates namely accused 2 and 3.

He had believed them and affixed his signature. Further, for the celebration of All India Cooperative Week, the bank had incurred expenditure for which book adjustments have been made and the expenditure were adjusted and recorded later. The learned counsel further submitted that the trial court had acquitted the petitioner and it is the Sessions Court which had convicted. There is a contra judgment against him. Further, the petitioner has been on and off the hospital, taking treatment as inpatient for some time and continuing his treatment as out patient. Recently, he is also become heart patient with severe other ailments and his vital parts are not functioning property. He is surviving with regular medical treatment and he is bedridden.

11. The learned Additional Public Prosecutor, opposing the contention of the petitioner, submitted that the petitioner is the main accused in this case. He is a senior Assistant and the other two persons are his subordinates and on his instructions only, bills and vouchers were created and the bank registers were entered with false particulars. The petitioner had misappropriated the bank money which was entrusted to him. The prosecution has examined witnesses to prove about the misappropriation. The trial court on a misreading of the evidence, had acquitted the petitioner. But the Sessions Court had



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rectified the same finding the petitioner's active involvement in the case and convicted him. As regards the petitioner's age and health conditions, the Additional Public Prosecutor confirmed that the petitioner is bedridden and he is aged about 80 years. The learned Public Prosecutor also confirmed that the petitioner had deposited the misappropriated fund as per the charge.

12. In view of the same, this Court finds that the finding of the lower Appellate Court needs to be reconsidered. Further taking note of the fact that there are arguable points involved in these revisions and it would take some time for the revisions to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioner and grant him the relief of exemption from surrender.

13. Accordingly, the reliefs of suspension of sentence and exemption from surrendering are granted on the following conditions, till the disposal of the above Criminal Revisions:

(a) The petitioner is ordered to be enlarged on bail, on condition that he 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 Judicial Magistrate No.1, Salem.



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(b) 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 Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall appear before the Trial Court once in three months at 10.30 a.m. on the first working day of the month, until the disposal of the revisions and if he is not able to appear before the Trial Court on that 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.

8. Accordingly, this Criminal Miscellaneous Petitions are ordered.

9. Post the revision cases for hearing in the usual course.

19.03.2024

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M. NIRMAL KUMAR, J.

mrn

To

- 1.The Inspector of Police,
C.C.I.W., CID,
Salem
- 2.The I Additional District Sessions Judge, Salem
- 3.The Judicial Magistrate No.1, Salem
- 4.The Public Prosecutor,
High Court, Madras.

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