



CRL.M.P.(MD)No.4962 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Friday, the Twenty Sixth day of April Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice K.K. RAMAKRISHNAN

CRL.M.P.(MD)No.4962 of 2024

in

CRL.R.C.(MD)No.456 of 2024

V.GURUSAMY

... PETITIONER/PETITIONER

Vs

BOMMAIYA

... RESPONDENT/RESPONDENT

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to enlarge the petitioner on bail by suspending the sentence imposed in C.A No. 85 of 2017 on the file of the learned Additional District and Sessions Judge, Srivilliputhur dt. 07.12.2023 confirming the judgment of conviction and sentence made in C.C.No.42 of 2015 on the file of Learned Fast Track Judicial Magistrate Court, Srivilliputhur dated 24.05.2017 pending disposal of the Criminal Revision Petition.

Prayer in CRL RC(MD). 456/ 2024 :

To call for the records and set aside the judgment made in Judgment made in C.A No. 85 of 2017 on the file of the learned Additional District and Sessions Judge, Srivilliputhur dt. 07.12.2023 confirming the judgment of conviction and sentence made in C.C.No.42 of 2015 on the file of Learned Fast Track Judicial Magistrate, Srivilliputhur dated 24.05.2017.

Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of

<https://www.mhc.tn.gov.in/judis>



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M/S.SENTHIL.M.P, Advocate for the petitioner, the court made the following order:-

This petition is filed to suspend the sentence imposed on the petitioner by the learned Additional District and Sessions Judge, Srivilliputhur, in C.A.No.85 of 2017 dated 07.12.2023, in confirming the conviction and sentence imposed by the learned Judicial Magistrate, Fast Track Court, Srivilliputhur, in C.C.No.42 of 2015, dated 24.05.2017 pending disposal of the main Criminal Revision.

2.The case of the respondent is that the petitioner borrowed a sum of Rs.1,50,000/- from the respondent, for which, he said to have executed a promissory note by agreeing to pay interest at the rate of 12% per annum. Towards repayment of such due, the petitioner said to have issued a cheque bearing No.793891, dated 19.07.2015 for a sum of Rs.1,50,000/- drawn on State Bank of India, Srivilliputhur Branch. While, the respondent presented the said cheque for payment, the same was returned with an endorsement as "Funds Insufficient", for which, on 10.08.2015, the respondent had also issued legal notice. The petitioner/accused had received the notice and further the petitioner neither paid any amount nor sent any reply. Hence, the respondent filed a complaint under Section 138 of Negotiable Instruments act, and the same was taken on file in C.C.No.42 of 2015 before the learned Judicial Magistrate, Fast Track Court, Srivilliputhur.



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3. During trial, on the side of the respondent, two witnesses have been examined as P.W.1 and P.W.2 and exhibited 6 documents as Ex.P.1 to Ex.P.6 and no material objects were marked. On the side of the accused, two witnesses have been examined as D.W.1 and D.W.2 and exhibited 3 documents as Ex.D1 to Ex.D3.

4. The learned Judicial Magistrate, Fast Track Court, Srivilliputhur, after full-fledged trial, has passed the judgment in C.C.No.42 of 2015, dated 24.05.2017, and convicted the petitioner/accused for the offence under Section 138 of the Negotiable Instrument Act, and sentenced him to undergo two years Simple Imprisonment and to pay a fine amount of Rs.3,000/- in default to undergo one month of Simple Imprisonment. Challenging the above said conviction and sentence, the petitioner preferred the Criminal Appeal before the Additional District and Sessions Judge, Srivilliputhur, in C.A.No.85 of 2017. However, the same was dismissed on 07.12.2023, thereby confirming the conviction and sentence imposed on the petitioner. Aggrieved over the above said conviction and sentence, imposed by the Courts below, the petitioner preferred the present Criminal Revision Case along with the present Miscellaneous Petition seeking for suspension of sentence.

5. The learned counsel for the petitioner submitted that there are some arguable points involved in the criminal revision and the learned trial Judge as well as the Appellate Judge has not considered the evidence in proper prospective and hence, the



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judgments are suffered from perversity. He further submitted that the petitioner has also undertakes to deposit a further sum of Rs.50,000/- (Rupees Fifty Thousand only) to the respondent. Hence, he seeks for the suspension of sentence.

6. This Court has carefully considered the submission made by the counsel for the petitioner and also perused the materials available on record.

7. Considering the fact that the petitioner undertakes to deposit a further sum of Rs.50,000/- (Rupees Fifty Thousand only) and there was no antecedent against the petitioner and there are some arguable points involved in the criminal revision, this Court is inclined to grant suspension of sentence.

8. Accordingly, this petition is allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the revision with the following directions:-

(i) The petitioner shall deposit a sum of Rs.50,000/- (Rupees Fifty Thousand only) to the credit of C.C.No.42 of 2015 on the file of the learned Judicial Magistrate, Fast Track Court, Srivilliputhur, on or before 20.07.2024, failing which the sentence suspended shall automatically dismissed and the respondent is at liberty to execute the sentence imposed by the trial Court against the petitioner in the manner known to law;



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(ii) On such deposit, the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate, Fast Track Court, Srivilliputhur;

(iii) The sureties shall affix her 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 to ensure her identity; and

(iv) The petitioner shall appear before the trial Court once in a month i.e., on the first working day of every English calendar month at 10.30 a.m., until further orders.

8.1. On such deposit being made, the learned trial judge, is hereby directed to re-deposit the amount of Rs.50,000/- in any one of the Nationalized Bank in interest bearing account.

9. Post the matter on 22.07.2024, for reporting compliance.

sd/-
26/04/2024

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/06/2024
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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VSG

TO

1 THE ADDITIONAL DISTRICT & SESSIONS JUDGE,
SRIVILLIPUTHUR.

2 THE JUDICIAL MAGISTRATE
FAST TRACK COURT, SRIVILLIPUTHUR.

3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-5015[I] dated 29/04/2024)

ORDER IN
CRL.M.P.(MD)No.4962 of 2024
in
CRL.R.C.(MD)No.456 of 2024
Date :26/04/2024

SA/JGB/SAR. /12.06.2024/6P/5C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.