



Crl.M.P(MD)No.9468 of 2024

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

Friday, the Thirteenth day of September Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

Crl.M.P(MD)No.9468 of 2024

in

Crl.R.C.(MD)No.460 of 2024

M.ANTHONY ROY

... PETITIONER/ APPELLANT/
ACCUSED 1

Vs

THE STATE REPRESENTED BY
INSPECTOR OF POLICE,
COMMERCIAL CASES INVESTIGATION WING
(ECONOMIC OFFENCE WING),
NO.3, RAJARAJESHWARI NAGAR,
PERUMALPURAM,
TIRUNELVELI DISTRICT.
CRIME NO.1/2015.

... RESPONDENT/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 suspend the sentence imposed in Judgment dated 13/9/2023 made in CC No.2/2016 on the file of the Judicial Magistrate Court, No.II, (CCIW-Special) Court, Tirunelveli, which was confirmed dismissing the appeal by the Judgment dated 14/3/2024 made in Crl.Appeal No.162 of 2023 on the file of the 1st Additional District Sessions Court, Tirunelveli.



Crl.M.P(MD)No.9468 of 2024

Prayer in CRL RC(MD). 460/ 2024 :

To allow the revision and set aside the dismissal order Judgment dated 14/3/2024 made in Crl.A.No.162/2023 on the file of 1st Additional District Sessions Court, Tirunelveli confirming the conviction Judgment dated 13/9/2023 made in CC No.2/2016 on the file of Judicial Magistrate No.II, (CCIW-Special Court), Tirunelveli.

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 Mr.K.GOKUL, Advocate for the petitioner and of Mr.K.SANJAI GANDHI, Government Advocate(crl.side) on behalf of the Respondent, the court made the following order:-

RESERVED ON	09.09.2024
PRONOUNCED ON	13.09.2024

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in Crl.A.No.162 of 2023 dated 14.03.2024 on the file of the I Additional District Sessions Court, Tirunelveli confirming the judgment of conviction and sentence imposed in C.C.No.2 of 2016 dated 13.09.2023 on the file of the Judicial Magistrate Court No.2, (CCIW-Special), Tirunelveli and enlarge the petitioner on bail pending disposal of the above criminal revision.

2.The case of the prosecution is that during the period from 10.05.2013 to 09.05.2014, 0.1652 Uvari Fishermen's Co-operative Society, which was under the control of the Joint Director, Radhapuram Commodity Fishermen's Cooperative Society, when the petitioner herein was a Secretary of society and A2 was working as



Crl.M.P(MD)No.9468 of 2024

WEB COPY

a Clerk, the sale amount for selling kerosene sent from TOPGOBET Company, Tuticorin to the Thava Society was Rs.65,21,057/-, that the Thava Society has paid a sum of Rs.55,47,000/- only to the Tuticorin TOPGOPET Company, that the petitioner and other accused said to have misappropriated a sum of Rs.10,80,000/- and that the respondent registered the case in Cr.No.1 of 2015 for the offence punishable under Sections 408, 409 IPC. After completing investigation, the respondent has laid a final report and the case was taken on file in C.C.No.2 of 2016 and the same was pending on the file of the Judicial Magistrate Court No.2, (CCIW-Special), Tirunelveli.

3.During trial, the prosecution has examined 15 witnesses as P.W.1 to P.W.15 and exhibited 398 documents as Ex.P.1 to Ex.P.398. The accused has neither examined any witnesses nor produced any documents.

4.After full-fledged trial, the learned trial Judge has passed a judgment dated 13.09.2023 convicting the petitioner for the offence punishable under Sections 409 and 477(A) IPC and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one month simple imprisonment for the offence under Section 409 IPC and imposed a fine of Rs.5,000/-, in default, to undergo one month simple imprisonment for the offence under Section 477(A) IPC. Aggrieved by the said judgment of conviction and sentence, the accused has preferred an appeal before the I Additional District Sessions Court, Tirunelveli in



Crl.M.P.(MD)No.9468 of 2024

Crl.A.No.162 of 2023, but the same was dismissed vide judgment dated 14.03.2024 confirming the conviction and sentence imposed on the petitioner. Challenging the above dismissal of the appeal, the petitioner has preferred the present revision.

5.It is not in dispute that the petitioner earlier filed a petition to suspend the sentence in Crl.M.P.(MD)No.5005 of 2024, that this Court taking note of the undertaking given by the petitioner to deposit a sum of Rs.5,00,000/-, has passed an order dated 30.04.2024 directing the petitioner to deposit a sum of Rs.5,00,000/- to the credit of C.C.No.2 of 2016 on the file of the learned Judicial Magistrate No.II (CCIW-Special Court), Tirunelveli, within a period of four weeks from the date of receipt of copy of the said order. It is also not in dispute that since the petitioner has not complied with the directions of this Court and has not deposited the said amount, this Court has passed an order dated 19.07.2024 setting aside the order passed in Crl.M.P.(MD)No.5005 of 2024 dated 30.04.2024 and directed the learned Judicial Magistrate No.II (CCIW-Special Court), Tirunelveli to secure the petitioner and sent him to prison to serve remaining period of sentence imposed in C.C.No.2 of 2016. After dismissal of the said petition, the petitioner has now come forward with the present petition to suspend the sentence.

6.The petitioner in the affidavit filed in support of this petition would state that he was not able to mobilize the fund of Rs.5,00,000/- as directed by this Court, that



Crl.M.P(MD)No.9468 of 2024

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the petitioner has been suffering from financial crisis and hence, he was not able to deposit the said amount, that the petitioner's entire family is depending upon him as he is the sole bread winner of the family, that if the petitioner surrender before the trial Court and send to the jail, he would be put into great hardship and irreparable loss and that it has become just and necessary to exempt him from surrendering in C.C.No.2 of 2016 on the file of the learned Judicial Magistrate No.II (CCIW-Special Court), Tirunelveli.

7.The learned counsel appearing for the petitioner would rely on the recent decision of the Hon'ble Supreme Court in the case of Nikhil Vs. State of Maharashtra in SLP(Crl.)No.10302 of 2023, wherein the Hon'ble Supreme Court, taking into account the purpose and object of Section 357, read with its enunciation in Dilip S.Dahanukar Vs. Mahindra Co.Ltd. reported in 2007 (6) SCC 528, has held that the direction of High Court granting suspension of sentence subject to the condition of depositing 50% of compensation, in the criminal appeal, is not justified and allowed the said appeal and set aside the said condition. But, in the case on hand, in the criminal revision, the petitioner himself has voluntarily given an undertaking that he would deposit a sum of Rs.5,00,000/- and hence, this Court, by taking note of the undertaking and also considering the fact that there was no antecedents as against the petitioner, has proceeded to pass an order of suspending the sentence by



Crl.M.P(MD)No.9468 of 2024

WEB COPY

imposing necessary conditions, which includes deposit of Rs.5,00,000/-. As rightly pointed out, the petitioner has not deposited the said amount as per the undertaking given by him.

8.To put it in other way, the petitioner, by giving such a false undertaking, has made this Court to grant suspension of sentence, subsequently, failed to comply with the said order and he has practically cheated the Court. More over, as rightly pointed out by the learned Judge of this Court, after coming to know that the petitioner has not complied with the directions, has suo motu set aside the order and directed the learned Judicial Magistrate No.II (CCIW-Special Court), Tirunelveli to secure the petitioner and sent him to prison.

9.As rightly contended by the learned Government Advocate(Crl.side), even after passing of the said order, the petitioner, whose suspension of sentence order has been set aside, has not chosen to surrender before the concerned Court.

10.When this Court has raised a query as to how the petitioner has filed the second petition for suspension of sentence, when the earlier order of suspension of sentence was set aside on the ground that the petitioner has failed to comply with the order of this Court, the learned counsel appearing for the petitioner would simply say that the Court can pass any orders. Considering the above facts and circumstances, the said submissions made on behalf of the petitioner, cannot be



Crl.M.P(MD)No.9468 of 2024

appreciated.

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11.Hence, this Court has no hesitation to hold that the petitioner is not entitled to get the relief as prayed for and as such, this petition is liable to be dismissed.

12.In the result, this criminal miscellaneous petition is dismissed. The learned Judicial Magistrate No.II (CCIW-Special Court), Tirunelveli is directed to take necessary steps to secure the petitioner and send him to prison to serve the remaining period of sentence imposed in C.C.No.2 of 2016.

sd/-

13/09/2024

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12/11/2024

Sub-Assistant Registrar

(C.S. I / II / III / IV)

Madurai Bench of Madras High Court,

Madurai - 625 023.

GNS

TO

1 THE JUDICIAL MAGISTRATE NO.II,
(CCIW-SPECIAL) COURT, TIRUNELVELI.

2 DO THROUGH THE CHIEF JUDICIAL
MAGISTRATE, TIRUNELVELI DISTRICT.

3 THE I ADDITIONAL DISTRICT SESSIONS JUDGE,
TIRUNELVELI.

4 THE INSPECTOR OF POLICE,
COMMERCIAL CASES INVESTIGATION WING
(ECONOMIC OFFENCE WING),
NO.3, RAJARAJESHWARI NAGAR,
PERUMALPURAM, TIRUNELVELI DISTRICT.

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



CrI.M.P(MD)No.9468 of 2024

5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CrI.M.P(MD)No.9468 of 2024
in
CrI.R.C.(MD)No.460 of 2024
Date :13/09/2024

SA/SAR. /12.11.2024/8P/6C

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