



CRL.M.P.(MD)No.5501 of 2024

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

Tuesday, the Eleventh day of June Two Thousand and Twenty Four

PRESENT

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

CRL.M.P.(MD)No.5501 of 2024

in

CRL.R.C.(MD)No.518 of 2024

R.ESAKKIMUTHU

... PETITIONER/PETITIONER

Vs

F.MICHEAL GEORGE

... 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 CC.No.163/2016 dt 09.08.2021 on the file of Judicial Magistrate Valliyoor and confirmed the same in Crl.A.No .53/2021 dt 20.02.2023 on the files of 4th Additional Sessions Court, Tirunelveli and enlarge the Prayer in CRL RC(MD). 518/ 2024 :

To Call for the records and to set aside the order in Crl.A.No.53/2021 dt 20.02.2023 on the files of 4th Additional Sessions Court Tirunelveli Confirming the order passed in CC.No.163/2016 dt 09.08.2021 on the files of Judicial Magistrate Valliyoor.

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.SC.HEROLD SINGH, Advocate for the petitioner and of Mr.C.SUSIKUMAR, Advocate on behalf of the Respondent, While admitting the Criminal Revision Case, the court made the following order:-

<https://www.mhc.tn.gov.in/judis> This petition is filed to suspend the sentence imposed on the petitioner by the



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learned IV Additional Sessions Judge, Tirunelveli , in C.A.No.53 of 2021 dated 20.02.2023, in confirming the conviction and sentence imposed by the learned Judicial Magistrate, Valliyoor, in C.C.No.163 of 2016, dated 09.08.2021 pending disposal of the main Criminal Revision.

2.The case of the respondent is that on 12.07.2015, the petitioner received a sum of Rs.1,00,000/- as loan and in token to the repayment, he issued a cheque for Rs.1,00,000/- bearing No.803421 dated 12.10.2015 with instruction to encash the same on the day or any other day. Based on the instruction, on 01.12.2015, the respondent deposited the cheque with the ICICI Bank, Vadakankulam Branch. However, the said cheque was returned with an endorsement "Funds Insufficient". Therefore, on 31.12.2015, notice was issued to the petitioner. As the addressed was changed, notice was returned to the respondent. The petitioner/accused did not receive 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.163 of 2016 before the learned Judicial Magistrate, Valliyoor.

3. During trial, the complainant and other have been examined as P.W.1 and Ex.P.W.1 to Ex.P.W.5 were marked. On the side of the accused, neither a document was produced nor a witness was examined.



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4.The learned Judicial Magistrate, Valliyoor, after full-fledged trial, has passed the judgment in C.C.No.163 of 2016, dated 09.08.2021, and convicted the petitioner/accused for the offence under Section 138 of the Negotiable Instrument Act, and sentenced him to undergo one year Simple Imprisonment and to pay compensation of Rs.2,00,000/- (Rupees Two Lakhs Only) to the complainant within a period of two months from the date of the judgment in default to undergo three months of Simple Imprisonment. Challenging the above said conviction and sentence, the petitioner preferred the Criminal Appeal before the learned IV Additional Sessions Judge, Tirunelveli , in C.A.No.53 of 2021 dated 20.02.2023. However, the same was dismissed on 20.02.2023, 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 judgments are suffered from perversity. He further submitted that the petitioner has also undertakes to deposit a further sum of Rs.20,000/- (Rupees Twenty Thousand



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only) of the compensation amount to the respondent in addition to the amount of Rs.40,000/- already deposited during the course of hearing of appeal. 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.20,000/- (Rupees Twenty Thousand only) of the compensation amount 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.20,000/- (Rupees Twenty Thousand only) of the compensation amount to the credit of C.C.No.163 of 2021 on the file of the learned Judicial Magistrate, Valliyoor, on or before 29.06.2024, failing which the sentence suspended shall automatically be 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, Valliyoor.

(iii) 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 to ensure their 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. The learned trial judge, is hereby directed to re-deposit the entire amount of Rs.60,000/- in any one of the Nationalized Bank in interest bearing account.

sd/-
11/06/2024

/ TRUE COPY /

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

JBR
TO
1 THE JUDICIAL MAGISTRATE,
VALLIYOOR.



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2 DO THROUGH THE CHIEF JUDICIAL
MAGISTRATE, TIRUNELVELI DISTRICT.

3 THE 4th ADDITIONAL SESSIONS JUDGE,
TIRUNELVELI.

COPY TO:

THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.(CALL FOR RECORDS)

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-6354[I] dated 12/06/2024)

ORDER IN
CRL MP(MD) No.5501 of 2024
Date :11/06/2024

SA/VR/SAR. /25.06.2024/6P/6C

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