



CRL MP(MD)NO.13298 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.01.2025

CORAM

THE HONOURABLE MR JUSTICE P.VADAMALAI

CRL MP(MD)NO.13298 of 2024

IN

CRL RC(MD)NO.460 of 2024

M.Anthony Roy,
S/o.Mariyaraj,
252/1, Raja Street, Uvari,
Radhapuram Taluk,
Tirunelveli District.

Petitioner

Vs.

The State represented by
The Inspector of Police,
Commercial Cases Investigation Wing
(Economic Offence Wing)
No.3 Rajarajeshwari Nagar,
Perumalpuram, Tirunelveli District.
Crime No.1 of 2015

Respondent

For Petitioner : Mr.K.Gokul
For Respondent : Mr.M.Vaikkam Karunanithi
Government Advocate (Crl.side)

ORDER

This petition has been filed to enlarge the petitioner on bail by suspending the sentence imposed upon him in Crl.A.No.162 of 2023 on the file of the I Additional District and Sessions Judge, Tirunelveli, dated 14.03.2024, confirming the conviction and sentence imposed in C.C.No.2 of 2016 on the file of the Judicial Magistrate Court



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No.II (CCIW-Special Court), Tirunelveli by its judgment, dated 13.09.2023 pending disposal of the main criminal revision.

2.The brief facts of the case;

The revision petitioner was serving as Secretary in O.1652 Uvari Fishermen's Cooperative Society from 10.05.2013 to 09.05.2014. One Gnanirajadurai was working as a Clerk in that society along with the revision petitioner. It was alleged that during their tenure, Tamilnadu State Apex Fisheries Cooperative Federation Limited through TOPGOBET Company supplied kerosene to the value of Rs.65,21,057/- to the society for selling kerosene at subsidy rate to fishermen. It was the further case that the revision petitioner and the clerk sold the same, but settled the sale amount at Rs.55,47,000/- to TOPGOBET Company and they misappropriated Rs.10,80,000/- and thereby caused loss to the society. Hence, the respondent police registered a case in Crime No.1 of 2015 against the revision petitioner and clerk Gnanirajadurai under Sections 408 and 409 of IPC and after completion of investigation laid a final report against them under Sections 408, 477(A) r/w 34 and 409, 477(A) of IPC and the same was taken as C.C.No.2 of 2016 by the Judicial Magistrate Court No.II (CCIW-Special Court), Tirunelveli. The respondent police examined P.W.1 to P.W.15 and marked Ex.P.1 to Ex.P.398. The defense side has not produced any oral or documentary evidence. After hearing both sides and after perusing evidences, the learned Judicial



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Magistrate No.II (CCIW-Special Court), Tirunelveli convicted the revision petitioner/Accused No.1 under Section 409 of IPC and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 30 days imprisonment and for the offence under Section 477(A) of IPC sentenced him to pay fine of Rs.5,000/-, in default to undergo 30 days imprisonment and acquitted the clerk Gnanirajadurai/Accused No.2 from the charges.

2.1 Challenging the above said conviction and sentence, the revision petitioner/Accused No.1 has preferred the Criminal Appeal before the I Additional District and Sessions Judge, Tirunelveli in Crl.A.No.162 of 2023 and the same was dismissed on 14.03.2024 by confirming the conviction and sentenced imposed by the trial Court in C.C.No.2 of 2016.

3. Aggrieved by the dismissal of appeal, the petitioner/Accused No.1 has preferred the present Criminal Revision Case before this Court. Pending the present Criminal Revision Case, the petitioner has already filed the petitions in Crl.M.P.Nos.5005 of 2024 and 9468 of 2024 before this Court to suspend the imprisonment of sentence and both the petitions were dismissed as the petitioner failed to comply with the condition imposed by this Court. Now, the revision petitioner has filed this petition as the third time for suspension of sentence.

4. Heard the learned counsel appearing for the petitioner and the learned



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Government Advocate (Criminal Side) appearing for the respondent.

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5. The learned counsel for the petitioner has submitted that the trial Court has imposed imprisonment of one year and total fine of Rs.10,000/-, and has not imposed any compensation. He would further submit that of course the revision petitioner has given undertaking to deposit Rs.5,00,000/- (Rupees Five lakhs only) at the time of filing of the first petition, however he was not able to mobilize the said sum as he was in financial crisis and could not comply with the condition, the first petition for suspending sentence was dismissed by this Court and directed the trial Court to secure the petitioner for execution of sentence. Again the petitioner has filed the 2nd petition and the same was also dismissed by this Court on the ground that the petitioner gave false undertaking. In fact, the revision petitioner was not able to arrange such a huge amount and he was arrested and now he is in prison from 21.09.2024. The Hon'ble Supreme Court held that while exercising the appellate power, ordinarily a person should not suffer imprisonment only because the conditions imposed for suspending the sentence are harsh. The learned counsel further submitted that there are several infirmities in the prosecution case and further, there are contradictions in material particulars among the evidences of prosecution witnesses and hence, the sentence of imprisonment may be suspended considering the fact that now the petitioner is in prison for more than 120 days. In



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support of his contention, the learned counsel relied on the citation of the Hon'ble Supreme Court in (2007) 6 Supreme Court Cases 528 (Dilip S.Dahanukar vs. Kotak Mahindra Co.Ltd. and Anr.).

6. The learned Government Advocate (Crl.Side) appearing for the respondent has submitted that the misappropriation of Co-operative Society amount is involved in this case and in spite of earlier dismissal of petitions for suspension of sentence, the revision petitioner has not surrendered before the Court for executing sentence and only on execution of NBW, the petitioner was arrested. Therefore, the petitioner is not entitled to the relief of suspension of sentence.

7. This Court has carefully considered the rival contentions put forward by either side and also perused the materials available on record.

8. The learned counsel for the petitioner pointed out certain infirmities and inconsistencies in the evidences of prosecution case and also there are certain contradictions in the material evidences. However, these are to be decided while deciding the criminal revision on merits. The fact remains that already the petitioner has filed Crl.M.P.(MD)No.5005 of 2024 and this Court passed the conditional order on 30.04.2024 suspending the imprisonment of sentence on deposit of Rs.5 lakhs by the petitioner as he gave undertaking and as the petitioner has not complied with the condition that petition was dismissed on 19.07.2024 by this Court. Again the



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petitioner has filed Crl.M.P(MD)No.9468 of 2024 seeking suspension of sentence and the same was also dismissed by this Court on 13.09.2024.

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9. At this juncture, the learned counsel for the petitioner submitted that the petitioner was not able to mobilize the amount as per his undertaking and now he is in prison as he was arrested on execution of NBW, so the earlier order of this Court is fully exhausted. He would further submit that the Appellate Court may pass condition of deposit only if compensation is awarded by the trial Court, in this case, the trial Court has not awarded any compensation, but only imposed a total fine of Rs.10,000/- and the petitioner should not suffer imprisonment only because the condition imposed for suspending the sentence is harsh as per proposition of the Hon'ble Supreme Court in (2007) 6 Supreme Court Cases 528. The said citation is carefully perused. The Hon'ble Supreme Court held as follows:

"72. We, therefore, are of the opinion:

(i) In a case of this nature, sub-section (2) of the Section 357 of the Code of Criminal Procedure would be attracted even when the appellant was directed to pay compensation;

(ii) The appellate court, however, while suspending the sentence, was entitled to put the appellant on terms. However, no such term could be put as a condition precedent for entertaining the appeal which is a constitutional and statutory right;



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(iii) The amount of compensation must be reasonable sum;

(iv) The court, while fixing such amount, must have regard to all relevant factors including the one referred to in sub-section (5) of Section 357 of the Code of Criminal Procedure;

(v) No unreasonable amount of compensation can be directed to be paid.”

10. Admittedly, the present criminal revision has been taken on file as there are arguable points involved in this criminal revision and further the criminal revision is not likely to be taken up for final hearing in the near future. The revision petitioner is in prison on execution of NBW and since his earlier petitions for suspension were dismissed on the ground of non-compliance of the condition of deposit. The petitioner submits that he was unable to mobilize the amount as directed earlier and now he is in prison for more than four months and he is the only breadwinner of his family and he is ready to obey any condition. Earlier petitions were dismissed while he failed to comply with the condition though suspension of sentence was granted on condition and now he is in prison from 21.09.2024. So, there are changed circumstances for this petition which is filed third time. In view of the proposition of the Hon'ble Supreme Court in (2007) 6 Supreme Court Cases 528 (Dilip S.Dahanukar vs. Kotak Mahindra Co.Ltd. and Anr.) and considering the incarceration period against one year imprisonment and considering all other facts



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and circumstances of the case, this Court is of the considered view that the petitioner is entitled to the relief of suspension of sentence.

11. Accordingly, this Criminal Miscellaneous Petition is allowed and the sentence of imprisonment alone is suspended against the revision petitioner till the disposal of the main Criminal Revision on the following conditions:-

(i) 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 No.II, (CCIW-Special Court), Tirunelveli;

(ii) 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

(iii) 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.

sd/-
24/01/2025

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27/01/2025

Sub-Assistant Registrar
Madurai Bench of Madras High Court,
Madurai - 625 023.

VSD



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1 THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE, TIRUNELVELI.

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

3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, TIRUNELVELI.

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

5 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI.

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

+1. C.C. to MR.K.GOKUL Advocate SR.No.4716[F] Dated 24/01/2025

ORDER

IN

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IN

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Date :24/01/2025

RS/IT/SAR-(27.01.2025) 9P 8C

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