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Sl. No. ~~40~~

S.O. No. 2144a/08/3/MP

**CIRCULAR**

Subj: Directions of Hon'ble High Court issued in MP(MD)No. 1/2008 in CR.L.A(SR)(MD)No.14591/08-ordered to be circulated-already circulated-modification issued in MP(MD)no.3/08 in MP(MD)No.1/2008 in CR.L.A(MD)(SR)no.14591/08-Communicated.

- Ref: 1. Order dated 13.08.08 in MP(MD)no.1/2008 in CR.L.A(SR)(MD)N.14591/08 by the Hon'ble Thiru Justice D.MURUGESAN and Thiru Justice M.BATHANAYAGAN.
- 2. Order dated 29.09.08 in MP(MD)no.3/08 in MP(MD)no.1/2008 in CR.L.A(MD)(SR)no.14591/08 by the Hon'ble Thiru Justice D.MURUGESAN and Thiru Justice M.BATHANAYAGAN.

In modification of the order dated 13.08.08 under reference first cited, a copy of the order dated 29.09.08 under reference second cited, (copies enclosed) which reads as under,

" whenever appeal is filed and suspension of sentence is prayed, the petition for suspension of sentence should be supported by an affidavit sworn to also by any one of the members of the family of the accused or his relatives or his friends and duly attested by a practising Advocate. The affidavit should be sworn to in terms of Section 297(2) of the Code of Criminal Procedure, 1973 read with rules 31 to 41 of the Criminal Rules of Practice relating to filing of affidavit. The learned Advocate who attests the affidavit shall indicate his Name, Roll No. and address "

is communicated for strict compliance.

The Principal District Judges are directed to bring this circular alongwith the copies of the Judgment /to the notice of all the subordinate Judges functioning under their control and to all the Bar Associations in the District.

The receipt of this circular is to be acknowledged.

Madurai Bench of Madras High Court,  
Madurai,  
11.11.08.

Sd/-R. Mohandoss,  
Registrar (Judl)

True copy/Forwarded/By ~~XXXX~~

Sd/-XXXXXX, 12.11.08,  
Assistant Registrar (Genl)

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HIGH COURT OF MADRAS  
Monday the Twenty Ninth day of September Two Thousand Eight

PRESENT

THE HON'BLE MR JUSTICE S. MURUGESAN AND  
THE HON'BLE MR JUSTICE M. SATHYANARAYANAN

MISCELLANEOUS PETITION <sup>30.3</sup> ~~113~~ OF 2008 IN  
MISCELLANEOUS PETITION No.1 OF 2008 IN

CRIM. APPEAL No. 14591 OF 2008.

Federation of District and Subordinate Courts  
Bar Association of Tamil Nadu and Pondicherry

Rep. by its Chairman

P. Paramasivan.

... Petitioner.

Vs.

1. Jaya & Jayan

2. The State Represented by  
the Inspector of Police  
Madurai Police Station  
Madurai District  
Crime No. 109 of 2008.

... Respondents  
(2nd Accused and  
Complainant)

Petition praying that in the circumstances stated therein  
and in the affidavit filed therewith the High Court will be pleased  
to modify the order passed in MP No.1 of 2008 in Crim. Appeal No.  
14591 of 2008 dated 13.08.2008.

MP No.1 of 2008: petition presented to condone the delay of 1002  
days in filing the Criminal Appeal No. 14591 of 2008 sought to be  
preferred to this Court against the judgment of the Additional  
District and Sessions Judge, Fast Track Court No. 111, Madurai dated  
31.08.2008 and made INSC N. 143 of 2008.

Orders: This petition coming on for hearing upon perusing the  
petition and the affidavit filed in support thereof and the order of  
this court dated 13.08.2008 and made in MP No.1 of 2008 and upon  
the hearing the arguments of Mr. R. Sivasubramanian, Advocate for the  
Chairman of the Federation of District and Subordinate Courts Bar  
Association of Tamil Nadu and Pondicherry, the petitioner, and of  
Mr. P. N. Pandichurai, Additional Public Prosecutor on behalf of the  
State and of Mr. P. Paramasivan Chairman of the Federation of District  
and Subordinate Courts Bar Association of Tamil Nadu and Pondicherry.

...!

and Subordinate Courts Bar Association of Tamil Nadu and Pondicherry, Mr. P. Kanakrishnan, member of the said federation, the Court made the following order:-

(Order of the Court was made by D. MURUGESAN, J.)

On 13.08.2008, by two separate orders, one in M.P.(MD)No.1/2008 in Cri.A(MD)SR No.14591/2008 and another in Cri.A(MD)No.335 of 2008 this Court directed "hitherto whenever appeal is filed and suspension of sentence is prayed, the petition for suspension of sentence should be supported by the affidavit of the petitioner/appellant, as is being done and followed in cases where the petition for condonation of delay is filed with supporting affidavits."

2. The above order came to be passed under the following circumstances:

(a) M.P(MD)No.1 of 2008 in Cri.A(MD) SR No.14591/2008 was filed seeking for condonation of delay of 1002 days in filing criminal appeal against the judgment, dated 31.08.2006, made in S.C.No.443/03 on the file of the learned Additional District and Sessions Judge, Fast Track Court No.III, Madurai. As the delay was nearly three years this court directed the Registry to verify from the trial court as to whether the records pertaining to the above said sessions case were still preserved. Pursuant to the same, a report was made to the Court stating that the very same petitioner by name Jeya @ Jeyan had earlier filed appeal in Cri.A.No.17/2006 and pending appeal, suspension of sentence was also ordered in Cri.M.P.202/2006 on 31.01.2006. On further verification from the learned Judicial Magistrate (in-charge), Melur, before whom the said Jeya @ Jeyan was directed to produce sureties, it came to light that the said petitioner was not released on bail as she had failed to produce sureties. On the above backdrop, it came to light that the said Jeya @ Jeyan by suppressing the pendency of appeal No.17/2006, which was already filed by her and also suppressing the fact that suspension of sentence was already ordered, had again preferred another appeal before this Court, of course with a petition to condone the delay.

(b) Similarly, one Radhakrishnan, filed Cri.A.(MD)No.335/2008 challenging the judgment of the learned Principal Sessions Judge, Ramanathapuram, made in S.C.No.129/2006, dated 29.09.2006. Pending

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appeal, he also filed M.P.(MD)No.3 of 2008 seeking for suspension of sentence. On verification, it came to light that the very same appellant had earlier filed Cri.(MD)No.506/2006 questioning the very same judgment, dated 29.09.2006, made in S.No.129/2006 and the said appeal was dismissed by this Court on 29.11.2007. Thus, without disclosing the dismissal of the earlier appeal, the subsequent appeal came to be filed.

(c) Therefore, this Court had taken note of the above facts and passed the order directing the accused/petitioner to file affidavit in support of the petition for suspension of sentence, only in order to avoid any embarrassment to the respective counsel who preferred the appeal <sup>or</sup> petition subsequently.

3. The present petition M.P.(MD)No.3 of 2008 in M.P.(MD)No. 1 of 2008 in Cri. (MD)R No.149591/2008 is taken out by the impleaded petitioner, namely the Federation of District and Subordinate Courts Bar Association of Tamilnadu and Pondicherry rep. by its Chairman Mr.P.Paramasivan, seeking for modification of the order dated 13.8.08 passed in M.P.(MD)No.1 of 2008. In the affidavit filed in support of the petition, it is stated as follows:

"3.1 submit that the Advocates are suffering much and feel very difficult to present applications to the jail authorities for interviewing the prisoner and they have to wait till the convict is brought for interview.

4. I submit that the Advocates are in hardship whenever they go to the jail authorities they have to be allowed in the working hours which is similar to working hours of the Courts.

5. I submit that the convicts are allowed to be present before the Advocates only two days in a week i.e., Tuesday and Thursday.

6. I submit that there is every possibility for conflict in between the Advocates and the Jail Authority."

4. We have also heard Mr.P.Paramasivan, Chairman of the Federation of District and Subordinate Courts Bar Association of

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Tamil Nadu and Pondicherry, Mr. K. Sivasubramanian, Vice-Chairman of the said Federation, and Mr. P. Ramakrishnan, a member of the said Federation who are present in the Court when the petition is taken up for hearing. The respective learned counsel would once again reiterate the hardships faced by the counsel in the getting affidavits from the accused and duly attested by the Superintendent of the concerned Jail. The respective counsel stressed on the fact that contrary to the practice of filing of an affidavit in support of the petition for condoning the delay, insistence of filing of an affidavit in support of petition for suspension of sentence may cause delay in getting urgent orders from this court and also from the subordinate Appellate Courts in deserving cases and ultimately it causes hardship to the accused who are confined in jail. As an alternative, the respective learned counsel fairly submitted that instead of filing an affidavit sworn to by the accused himself and attested by the jail authorities, such affidavit could be sworn to by any one of the family members of the accused or his relatives or the friends of the accused concerned and if this procedure is adopted, the embarrassment that could be caused to the Advocates can also be avoided.

5. We have also heard Mr. P. N. Pandithurai, the learned Additional Public Prosecutor, on the above submissions.

6. We have considered the above grievance espoused before this Court by the Chairman, Vice-Chairman and a member of the petitioner Federation, which represents a majority of Advocates Community. We appreciate their fair suggestion to tide over the situation where the Advocates are facing embarrassment when appeals and petitions are filed without disclosing the earlier filing of such appeals or petitions, as the advocates are not properly instructed by the concerned accused in this regard. Hence, we find every reason in the suggestion made by the Federation through its Chairman, Vice-Chairman as well as a member of the Federation.

7. Accordingly, the direction already issued on 13.08.2006, which reads as under:

In the above circumstances, in order to curtail such practice, the Court is compelled to direct that hitherto whenever appeal is filed and suspension of sentence is prayed,

the petition for suspension of sentence should be supported by the affidavit of the petitioner/appellant, as is being done and followed in cases where the petition for condonation of delay is filed with supporting affidavits. Office is directed to ensure the above in all cases where petitions are filed for suspension of sentence and seeking bail. We also direct the concerned Superintendents of Prisons or the Officer in-charge attesting the affidavit shall also cause a verification as to any appeal or petition is already filed at the instance of the appellant or petitioner, as the case may be, are pending in any Court as per the registers maintained by them"

is modified and the same shall be read as follows:

" In order to avoid any embarrassment to the respective counsel, who appears either in the petition seeking for suspension of sentence or in the appeal filed questioning the conviction and sentence, as to the suppression of earlier petition/appeal filed by the accused concerned, it is directed that hitherto whenever appeal is filed and suspension of sentence is prayed, the petition for suspension of sentence should be supported by an affidavit sworn to also by any one of the members of the family of the accused or his relative or his friends and duly attested by a practicing advocate. The affidavit should be sworn to in terms of section 297(2) of the Code of Criminal Procedure, 1973 read with rules 31 to 41 of the Criminal Rules of Practice relating to filing of affidavit. The learned Advocate who attests the affidavit shall indicate his Name, Roll No and Address "

6. The petition is ordered accordingly.

Sd/-~~xxxxxx~~,  
Assistant Registrar (Crl. Side).

/True copy/

Sd/-~~xxxxxx~~, 7.10.08,  
Sub Assistant Registrar (C.S).

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S.No.7457/2008, Dt.15.11.08. Principal District Court, Pudukkottai.

Copy communicated to (1) The Addl.District and Sessions Judge and Presiding Officer, Spl.Court for S.C.Act cases, Pudukkottai, (2) The Addl.District Judge, Fast Track Court, Pudukkottai. (3) The Assistant Sessions Judge, Pudukkottai .(4) The Chief Judicial Registrar

Pudukkottai, (5) The District Munsif-cum-Judicial Magistrate, Thirumayan/Keeranur, and (6) The Judicial Magistrates, Pudukkottai/ Aranthangi/Alangudi, the District Munsif, Pudukkottai and to all bar Associations in this District, <sup>and translator of laws court-</sup> for information and strict compliance.

Sd/-K.JAYASANKARAN,  
PRINCIPAL DISTRICT JUDGE,  
PUDUKKOTTAI.

/t.c.f.b.o/

~~Signature~~ 28/11/08

CHIEF ADMINISTRATIVE OFFICER,  
PRINCIPAL DISTRICT COURT,  
PUDUKKOTTAI.

3/28/11 3/28/11/08

D.No. 8591/08  
3-12-08

JTO/PMT