Crl.M.P.No.5643 of 2016
in
Crl.A.No.371 of 2016

R.SUBBIAH, J.

The petitioner/A4, was convicted for the alleged offences punishable under Sections 120-B r/w 419, 420, 467, 468, 471 IPC and Section 511 IPC r/w 420 IPC, by the learned XI Additional Special Judge, (Special Judge for CBI Cases relating to Banking and Financial Institutions), Chennai, in S.C.No.32 of 2004 vide judgment dated 23.03.2016. The sentence imposed on the petitioner/A4 by the Trial Court is as follows_

conviction	***sentence***
Section 120-B r/w 419 IPC	RI for 5 years and to pay a fine of Rs.5,00,000/-, in default to undergo SI for 6 moths.
Section 467 IPC (2 counts)	RI for 4 years and to pay a fine of Rs.3,00,000/-, in default to undergo SI for 6 months, for each count.
Section 420 IPC (4 counts)	RI for 4 years and to pay a fine of Rs.4,00,000/-, in default to undergo SI for 6 months, for each count.
Section 471 IPC (4 counts)	RI for 4 years and to pay a fine of Rs.3,00,000/-, in default to undergo SI for 6 months, for each count.
Section 511 r/w 420 IPC	RI for 3 years and to pay a fine of Rs.2,00,000/-, in default to undergo SI for 6 months. (**Total fine amount Rs.41 lakhs**)

2.It is the case of the prosecution that the petitioner/A4 along with the other accused persons, forged and fabricated the documents and by using such forged documents, the 1st accused-company availed loan of CC Rs.50 lakhs and LC limit Rs.100 lakhs, from the UCO Bank, T.Nagar Branch, Chennai, by furnishing three property securities, which were already given to the other bank for security. The accused persons cheated and caused illegal loss to the UCO Bank, T.Nagar Branch, to the tune of Rs.152 lakhs. Hence, the accused persons were prosecuted by the respondent.

3.Before the Trial Court, on the side of the prosecution, 38 witnesses were examined and 469 documents were marked as Ex.P.1 to Ex.P.469 and on the side of the accused persons, six documents were marked as Ex.D.1 to Ex.D.6. After considering the evidence, both oral and documentary, the Trial Court has convicted and sentenced the petitioner/A4 as stated supra. Aggrieved over the same, the petitioner/A4 has filed the present appeal. Pending the appeal, the petitioner has filed the present Miscellaneous Petition seeking to suspend the sentence pending the appeal.

4.It is the main submission of the learned counsel appearing for the petitioner that the petitioner/A4 has been directed by the Trial Court to pay a huge fine amount of Rs.41,00,000/-. In this regard, the learned counsel for the petitioner submitted that the petitioner was unable to remit the fine amount on the date of judgment of the Trial Court ie., on 23.03.2016; as such, the petitioner is in prison for the past five months. Further, no valid reason has been assigned by the Trial Court for arriving at the sum of Rs.41,00,000/- to fix as fine amount. In this regard, the learned counsel for the petitioner has also relied upon the judgment of the Hon'ble Supreme Court reported in ***(2007) 6 SCC 528 [Dilip S.Dahanukar Vs. Kotak Mahindra Co. Ltd.,],*** and submitted that the amount of compensation sought to be imposed must be reasonable and not arbitrary and before issuing a direction to pay compensation, the capacity of the accused to pay the same must be judged.

5.Further, according to the learned counsel for the petitioner, there are several infirmities and inconsistencies found in the prosecution case. There are contradictions in the material particulars between the evidence of the prosecution witnesses. In this regard, the learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court reported in ***(2009) 3 SCC 767 (Angana Vs. State of Rajasthan).*** Thus, the learned counsel for the petitioner sought for suspension of sentence, pending the appeal.

6.But, the learned Special Public Prosecutor appearing for the respondent, by filing a counter, vehemently opposed to grant the prayers sought for by the petitioner/A4, contending that the Trial Court has clearly observed that there was conspiracy between the petitioner/A4 with the other accused persons; that the accused persons caused huge loss of Rs.152 lakhs and its interest thereon, to the Bank; that no valid ground has been made out by the petitioner to suspend the sentence and to waive the fine amount. Thus, the learned Special Public Prosecutor sought for dismissal of the petition.

7.Heard both sides and perused the materials available on record.

8.Considering the facts and circumstances of the case and also in the light of the judgment of the Hon'ble Supreme Court reported in ***(2007) 6 SCC 528 [Dilip S.Dahanukar Vs. Kotak Mahindra Co. Ltd.,],*** I am of the opinion that instead of directing the petitioner to pay the entire fine amount, by directing the petitioner to deposit a reasonable amount, the sentence could be suspended, pending appeal.

9.Accordingly, the substantive sentence of imprisonment alone is suspended, pending appeal, 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 XI Additional Special Judge (Special Judge for CBI Cases relating to Banking and Financial Institutions), Chennai, within a period of 15 days from the date of receipt of a copy of this order.

(ii)The petitioner shall deposit a sum of Rs.20 lakhs in two instalments. Out of the total sum of Rs.20 lakhs, the petitioner shall deposit a sum of Rs.10 lakhs at the time of executing the bond before the Trial Court. The second instalment of Rs.10 lakhs shall be deposited by the petitioner, within a period of four months from today. In case of failure on the part of the petitioner in depositing the amount as stated above, the respondent can move this Court for cancellation of bail.

(iii)The petitioner shall report before the Trial Court at 10.30 am, once in a month ie. first working day of every month.

23.08.2016

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R.SUBBIAH, J.

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