

Crl.M.P.No.8160 & 8161 of 2016**in****Crl.A.No.593 of 2016****R.SUBBIAH, J.**

The petitioner/A4 was convicted for the alleged offences punishable under Sections 120-B r/w 409, 419, 420, 467, 468, 471 IPC and Section 13(2) r/w 13(1)(c)(d) of PC Act, by the learned XI Additional Sessions Judge, (Special Judge for CBI Cases relating to Banking and Financial Institutions), Chennai, in C.C.No.25 of 2009 vide judgment dated 21.07.2016. The sentence imposed on the petitioner/A5 by the Trial Court is as follows_

<i>conviction</i>	<i>sentence</i>
Section 120-B r/w 409, 419, 420, 467, 468, 471 IPC	RI for 4 years and to pay a fine of Rs.50,00,000/-, in default to undergo RI for 12 moths.
Section 13(1)(c)(d) of PC Act	RI for 4 years and to pay a fine of Rs.50,00,000/-, in default to undergo RI for 12 months, for each count. (Total fine amount Rs.1 crore/-)

2.It is the case of the prosecution that by entering into criminal conspiracy with the other accused, the petitioner/A4 along with other accused forged the documents and that by using the forged documents, the Accused 2 & 3 obtained loan from the State Bank of Bikaner and Jaipur and thus, they cheated the bank.

3.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.1 crore/-. 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 21.07.2016; as such, the petitioner is in prison for the past one month. Further, no valid reason has been assigned by the Trial Court for arriving at the sum of Rs.1 crore/- 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. Relying upon the said judgment, the learned counsel for the petitioner would submit that the fine amount imposed on the petitioner may be waived.

4.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.

5. 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 and the other accused persons; that the accused persons caused huge loss of Rs.246.35 lakhs and its interest thereon, to the Bank; that no valid ground has been made out by the petitioner to waive the fine amount. Thus, the learned Special Public Prosecutor sought for dismissal of the petitions.

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

7. 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.

8. 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 Sessions 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.40 lakhs in three instalments. Out of the total sum of Rs.40 lakhs, the petitioner shall deposit a sum of Rs.5 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.

The third instalment of Rs.25 lakhs shall be deposited by the petitioner within a period of eight 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.

24.08.2016

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