Crl.M.P.No.8814 of 2016
in
Crl.A.No.161 of 2015

R.SUBBIAH, J.

The petitioner/accused was convicted for the alleged offences punishable under Sections 409, 420, 468 and 465 r/w 471 IP and Section 13(2) r/w 13(1)(c) of Prevention of Corruption Act (in short 'PC Act') and under Sections 13(2) r/w 13(1)(d) of PC Act and Section 409 (6 counts), 420 (6 counts), 468 (6 counts) and 465 r/w 471 (6 counts) IPC and under Sections 13(2) r/w 13(1)(c) of PC Act (6 counts) and Sections 13(2) r/w 13(1)(d) of PC Act (6 counts), by the learned Principal Special Judge for CBI Cases (VIII Addl City Civil Court), Chennai, in C.C.No.10 of 2013 vide judgment dated 08.10.2014. The sentence imposed on the petitioner/Accused by the Trial Court is as follows_

conviction	***sentence***
Section 409 IPC	SI for 40 months and to pay a fine of Rs.1,50,000/-, in default to undergo SI for 10 moths.
Section 420 IPC	SI for 5 months and to pay a fine of Rs.1,000/-, in default to undergo SI for one month
Section 468 IPC	SI for 5 months and to pay a fine of Rs.1,000/-, in default to undergo SI for one month
Section 465 r/w 471 IPC	SI for 4 months and to pay a fine of Rs.200/-, in default to undergo SI for one month
Section 13(2) r/w 13(1)(c) of PC Act	SI for 40 months and to pay a fine of Rs1,50,000/-, in default to undergo SI for 10 months
Section 13(2) r/w 13(1)(d) of PC Act	SI for 40 months and to pay a fine of Rs1,50,000/-, in default to undergo SI for

conviction	***sentence***
	10 months
Section 409 IPC (6 counts)	SI for 40 months and to pay a fine of Rs1,00,000/-, in default to undergo SI for 10 months, for each count
Section 420 IPC (6 counts)	SI for 5 months and to pay a fine of Rs1,000/-, in default to undergo SI for 1 month, for each count
Section 468 IPC (6 counts)	SI for 5 months and to pay a fine of Rs1,000/-, in default to undergo SI for 1 month, for each count
Section 465 r/w 471 IPC (6 counts)	SI for 4 months and to pay a fine of Rs200/-, in default to undergo SI for 1 month, for each count
Section 13(2) r/w 13(1)(c) of PC Act (6 counts)	SI for 40 months and to pay a fine of Rs1,00,000/-, in default to undergo SI for 10 months, for each count
Section 13(2) r/w 13(1)(d) of PC Act (6 counts)	SI for 40 months and to pay a fine of Rs1,00,000/-, in default to undergo SI for 10 months, for each count (**Total fine amount is Rs.22,65,400/-)**

2.The case of the prosecution is as follows_

2-1.The petitioner/accused was working as Postal Assistant and officiating as Assistant Sub-Post Master at Royapettah Post Office during the period from 22.03.2006 to 30.09.2010 and thereafter at Gopalapuram Post Office with effect from 01.10.2010. While he was working as public servant as such in Gopalapuram Post Office, Chennai, on 11.04.2011 one Mr.Mohammed Munawar approached him and entrusted with him Rs.3,40,000/- for the purpose of depositing the same in Time Deposit Account. As requested by the petitioner/accused, the said Mr.Mohammed

Munawar submitted an account opening form with his photo affixed therein and signed pay-in-slip. Thereafter, the petitioner/accused with a dishonest intention to cheat the said Mr.Mohammed Munawar misappropriated the said sum of Rs.3,40,000/- and issued a forged Time Deposit Account pass book prepared by him with a non-existent Account number as 26208.

2-2.Similarly, while the petitioner was working as a public servant namely Postal Assistant and officiating as Assistant Sub- Post Master at Royapettah Post Ofice during the period mentioned supra, he developed close relationship with the customer Dr.C.K.Annamalai and thereby secured confidence in him for the said customer Dr.C.K.Annamalai who is a retired Pediatric Surgeon of Government of Tamil Nadu. The said witness Dr.C.K.Annamalai and his two daughters namely Dr.A.Saraswathy Chitra Devi and Dr.A.Geetha Lakshmi Devi each invested to the tune of Rs.2,00,000/- in Kissan Vikas Patras having maturity value of Rs.4 lakhs each in their names (totally Rs.12 lakhs) in Harur Post Office and thereafter, got them to be transferred to Royapettah Post office. Those Kissan Vikas Patras were got matured in April, 2010. Dr.C.K.Annamalai and his two daughters after affixing their signatures on the reverse side of their respective Kissan Vikas Patras entrusted those Kissan Vikas Patras to the accused for the purpose of giving credit of the matured proceeds into their Savings Bank Accounts bearing Nos.2680185, No.2682329 and No.2684917 respectively. At that time as advised by the accused, the customer Dr.C.K.Annamalai entrusted separate withdrawal slips duly signed by him and his two daughters for the purpose of withdrawing those matured amounts from their respective Savings Bank accounts and thereafter, to invest the same in Time Deposit Accounts in the names of Dr.C.K.Annamalai and his two daughters. For the said purpose, the accused obtained three account opening forms, withdrawal slips and pay-in-slips duly signed by Dr.C.K.Annamalai and his two daughters for opening and depositing the matured amounts of those Kissan Vikas Patras mentioned supra in three Time Deposit accounts in the names of Dr.C.K.Annamalai and his two daughters. The accused by submitting those withdrawal slips received Rs.2,00,000/- on 20.04.2010 and Rs.2,00,000/- on 23.04.2010 from the SB A/c of Dr.C.K.Annamalai and Rs.2,01,160/- on 01.05.2010 and Rs.2,00,000/- on 16.09.2010 and Rs.2,00,000/- on 18.09.2010 from the SB A/c of Dr.A.Geetha Lakshmi Devi. After withdrawing the matured amounts as above from the Savings Bank accounts of Dr.C.K.Annamalai and his two daughters, the petitioner/accused with dishonest intention misappropriated the same and issued forged and false Time deposit Pass Books mentioning the account numbers. Those account numbers were legally assigned to some other customers. As above, the petitioner/accused issued forged pass books with false accounts numbers and misappropriated a total sum of Rs.12,01,160/- belonging to Dr.C.K.Annamalai and his two daughters. As above, the petitioner/accused being a public servant committed the offences punishable under Sections 409, 420, 468, 468 r/w 471 IPC and under Sections 13(2) r/w 13(1)(c) and (d) of the Prevention of Corruption Act, 1988. Hence, the case has been registered against the petitioner.

3.Before the Trial Court, on the side of the prosecution, 20 witnesses were examined and 144 documents were marked as Ex.P.1 to Ex.P.144. On the side of the accused, neither oral nor documentary evidence was produced. After considering the evidence, both oral and documentary, the Trial Court has convicted and sentenced the petitioner/accused as stated supra. Aggrieved over the same, the petitioner/accused 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/Accused has been directed by the Trial Court to pay a huge fine amount of Rs.22,65,400/-. 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 08.10.2014; as such, the petitioner is in prison for the past nearly 2 years. Further, no valid reason has been assigned by the Trial Court for arriving at the sum of Rs.22,65,400/- 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, vehemently opposed to grant the prayers sought for by the petitioner/accused, contending that the Trial Court has clearly observed that the petitioner/accused has forged the documents and misappropriated the amounts deposited by the depositors, by misusing his office and cheated the depositors. It is further contended by the learned Special Public Prosecutor that no valid ground has been made out by the petitioner to suspend the sentence. 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 Principal Special Judge for CBI Cases (VIII Addl City Civil Court), 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.10 lakhs at the time of executing the bond before the Trial Court. 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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