IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Eleventh day of December Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice P. N. PRAKASH

CRIMINAL MISCELLANEOUS PETITION No.14356 & 14357 of 2017

IN CRL A.726/2017

C.SELVAM [PETITIONER / APPELLANT]

Vs

THE STATE REP.BY
DEPUTY SUPERINTENDENT OF POLICE,
E.O.W-II, CUDDALORE DISTRICT,
CR.NO.4 OF 2004. [RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.726/2017 on the file of the High Court, the High Court will be pleased to

[i] suspend the sentence passed against the petitioner/appellant in C.C.No.47 of 2006 dated 19.09.2017 on the file of the learned Special Judge under T.N.P.I.D.Act, Chennai and enlarge him on bail pending final disposal of the CRL A.726/2017 [IN CRL.MP.NO.14356 OF 2017]

[ii] suspend the fine amount passed against the petitioner/petitioner/appellant in C.C.No.47 of 2006 dated 19.09.2017 on the file of the learned Special Judge under T.N.P.I.D.Act, Chennai pending final disposal of the CRL A.726/2017 [IN CRL.MP.NO.14357 OF 2017]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.726/2017 on the file of the High Court and upon hearing the arguments of M/S.S.KUMARA DEVAN, Advocate for the petitioner and of MR. K.MATHAN, Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

M/s.T.R.N.& Sons Finance (A1) was running a Financial Establishment and had collected deposits from various persons and defaulted in repaying the amount. Therefore, on the complaint of one of the depositors, the respondent police registered a case in Crime No.4 of 2004 for the offences under Sections 420 and 406 read with 120 (B) IPC and thereafter, included Section 5 of the Tamil Nadu Protection of Interests of Depositors (In Financial Establishments) Act, 1997.

2.After completing the investigation, the police filed a final report in C.C.No.47 of 2006 before the Special Court for TNPID Act (Cases), Chennai-104, against T.R.N. & Sons Finance (A1), Kanagasabai (A2), Gomathi (A3), Shanthi @ Shanthidevi (A4), Sekar @ Gnanasekar (A5), Selvam (A6), Prasenna Devi (A7) and Arul Jothi (A8).

3.Admittedly, this Court had discharged Kanagasabai (A2), Gomathi (A3), Shanthi @ Shanthidevi (A4), Prasenna Devi (A7) and Arul Jothi (A8) vide orders dated 04.09.2009, 01.02.2011, 11.10.2011, 15.12.2011 respectively in Crl.R.C.Nos.591 and 1041 of 2009 and 230, 1689 and 1960 of 2011 respectively. Therefore, T.R.N. & Sons Finance (A1), Sekar Gnanasekar (A5) and Selvam (A6) alone faced the prosecution in C.C.No.47 of 2006 and they were convicted and sentenced by the trial Court on 19.09.2017 as follows:

> *"1) A1 is sentenced to pay a fine of Rs.5,00,000/-. The fine amount of Rs.5,00,000/- shall be paid by A5 and A6.*
>
> *2) A5 is convicted and sentenced to undergo Rigorous Imprisonment for a period of three years for each count (24 courts) and to pay a fine of Rs.5,00,000/- in default to pay the fine amount to undergo Simple Imprisonment for a period of three months.*
>
> *3) A6 is convicted and sentenced to undergo Rigorous Imprisonment for a period of three years for each count (24 counts) and to pay a fine of Rs.5,00,000/- in default to pay the fine amount to undergo Simple Imprisonment for a period of three months.*
>
> *4) Total fine amount Rs.15,00,000/-. From out of the fine amount, a sum of Rs.14,50,000/- is directed to be paid as compensation to the 24 depositors proportionately under Section 357 Cr.P.C.*
>
> *5) All the sentences shall run concurrently.*
>
> *6) The period of detention already undergone by the accused shall bet set off under Section 428 Cr.P.C."*

4.This appeal has been filed by C.Selvam(A6) and he has also filed Criminal Miscellaneous Petitions in Crl.M.P.No.14356 of 2017, for suspending the sentence of imprisonment and release him on bail and Crl.M.P.No.14357 of 2017, for suspending the fine amount imposed by the trial Court.

5.Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) for the respondent.

6.Learned counsel for the petitioner submitted that all the main accused have been discharged by this Court and that Selvam (A6) was working only as an office boy and that it was he who had given the first complaint against the financial establishment, but unfortunately, he was made an accused and has been convicted by the trial Court. 7.However, the learned Government Advocate (Criminal Side) has produced Ex.65, the letter dated 17.11.1998 wherein, the partnership deed relates to M/s.T.R.N.& Sons Finance and it shows that the said C.Selvam was also a partner in the financial establishment and the trial Court relied upon this document in order to convict him.

8.The learned counsel for the petitioner submitted that the financial establishment was run by one N.Balasundaram, who has been shown as first partner in the partnership deed Ex.P65, but the said Balasundaram had died and therefore, the financial establishment was not able to return the deposits to the depositors, resulting in the prosecution against Selvam (A6) and Sekar @ Gnanasekar (A5). He also submitted that Sekar @ Gnanasekar (A5) has been convicted and he has not even filed any appeal against his conviction and he is undergoing the imprisonment. Learned counsel further submitted that from 2004 onwards, Selvam (A6) has been facing the prosecution and he has no means even to pay the fine amount on account of his poverty. Learned counsel relied upon a Division Bench judgment of this Court in **Palani and Others v. State rep. by Inspector of Police, Cheyyar Police Station, Thiruvannamalai (2008) 1 MLJ (Crl) 853**, wherein, this Court has held as follows:

> *"The sentence of imprisonment as well as the direction for payment of fine are capable of being executable. In these circumstances, the discretionary power of the Appellate Court to suspend the execution of sentence must also necessarily include the execution of fine amount as well. However, there could be two requirements before such an order of suspending the fine amount is ordered namely, as to the hardship of the accused-petitioners if the stay of execution of fine is not granted and while granting suspension, sufficient safeguards must be made to ensure the recovery of the fine amount in case the appeal is finally dismissed."*

9.Per contra, Mr.K.Madhan, learned Government Advocate (Criminal Side) for the respondent submitted that the case relied on by the learned counsel for the petitioner relates to IPC offences where the Division Bench of this Court has taken into consideration the financial status of the accused and suspended the payment of fine amount, whereas the case at hand relates to financial delinquency and therefore, the entire fine amount cannot be waived.

10.This Court gave its anxious consideration to the rival submissions.

11.The trial Court has *prima facie* come to the conclusion that this petitionerwas involved in the business of T.R.N. & Sons Finance (A1) and the validity of this finding can be looked into only at the time of disposal of the main appeal. The fact remains that this petitioner has been in incarceration from the date of judgment, viz., 19.09.2017 and there is likelihood of this appeal not being taken up for hearing in the near future and that there are arguable points raised in the memorandum of grounds inasmuch as the accused has examined two witnesses in order to disprove the prosecution case that they were not involved in the management of financial establishment (A1), this Court is inclined to suspend the sentence.

12.Accordingly, substantive sentence of imprisonment and part fine is suspended and the petitioner is ordered to be released on bail on his executing a bond for a sum of Rs.10,000/-(Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the learned Special Judge, TNPID Act, (Cases), Chennai-600 104 and on further condition that:

(i) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Special Judge may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity.

(ii) The petitioner shall pay 25% of the fine amount and shall furnish the property security for the balance 75% of the fine amount so that in the event of appeal being dismissed, the fine amount could be recovered.

(iii) The petitioner shall appear before the trial Court at 10.30 a.m., on the first working day of every month until the disposal of the appeal and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

-sd/-
11/12/2017

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SPECIAL JUDGE,
T.N.P.I.D.ACT, CHENNAI.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE DEPUTY SUPERINTENDENT OF POLICE,
E.O.W-II, CUDDALORE DISTRICT,

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI.

+2C.C. to M/S.S.KUMARA DEVAN Advocate on payment of necessary charges SR NOS.22422, 22423

Order

in
CRL MP.14356 & 14357 OF 2017

in
CRL A.726/2017

Date :11/12/2017

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MK:15/12/2017