

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Twenty Second day of March Two Thousand Seventeen

PRESENT

The Hon `ble Mr Justice T.MATHIVANAN

CRIMINAL MISCELLANEOUS PETITION No.4284 of 2017

IN CRL A.165/2017

KALAICHELVI

[PETITIONER]

Vs

STATE REP. BY
DEPUTY SUPERINTENDENT OF POLICE,
V & AC, SPECIAL UNIT,
SALEM

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.165 of 2017 on the file of the High Court, the High Court will be pleased to suspend the execution of the sentence dated 07.03.2017 passed in Special C.C.No.17 of 2008 against the Petitioner/Appellant by the Chief Judicial Magistrate and Special Judge, Dharmapuri pending disposal of the above Crl.A.No.165 of 2017.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.165 of 2017 on the file of the High Court and upon hearing the arguments of M/S.V.N.KRISHNAMURTHY, Advocate for the petitioner and of MR.E.RAJA, ADDITIONAL PUBLIC PROSECUTOR FOR (V & AC) on behalf of the Respondent the court made the following order:-

This petitioner, being the second accused along with her husband (A1) are facing the charges under Sections 13(2) r/w.13(1)(e) of the Prevention of Corruption Act, 1988 r/w. Section 109 IPC in the case in C.C.No.17 of 2008 on the file of the learned Special Judge (Chief Judicial Magistrate), Dhamapuri.

2. During the course of trial, her husband/the first accused, had passed away. Therefore, the charges levelled against him automatically abated.

3. After the completion of the trial, the trial Court had found the appellant guilty of the offences under Sections 13(2) r/w.13(1)(e) of the Prevention of Corruption Act, 1988 r/w. Section 109 IPC, convicting thereunder and sentencing to suffer two years of simple imprisonment and to pay a fine of Rs.25,000/- and in default to suffer a further period of three months of simple imprisonment. Challenging the order of conviction and sentence recorded by the trial Court on 07.03.2017, the petitioner has preferred an appeal in Crl.A.No.165 of 2017. Along with the appeal, the petitioner has filed this petition to suspend the sentence till the disposal of the main appeal.

4. Heard Mr.V.N.Krishnamurthy, learned counsel for the petitioner and Mr.E.Raja, the learned Additional Public Prosecutor for the respondent.

5. The learned counsel for the petitioner has advanced his arguments on the following 4 points:

1. The Investigating Officer did not issue a final opportunity notice to the petitioner/appellant and obtained her explanation for the assets stood in her name.
2. The appellant was doing saree business and was getting regular income, but that was not taken into consideration by the trial Court.
3. The appellant had received a sum of Rs.5,00,000/- as her share from the sale of the ancestral property from her brothers and PW19, the Investigating Officer had also admitted that he did not examine the relatives of the appellant regarding this aspect and the trial Court has also not considered the same.
4. The cases in this nature for an offence under Section 13(i)(e) of the Prevention of Corruption Act, 1988, has observed by the Supreme Court in various judicial pronouncement, preliminary enquiry ought to have been conducted by the Investigating Officer prior to the registration of the First Information Report. But, insofar as this case is concerned, no such preliminary enquiry was conducted.

6. Considering the facts and circumstances of the case and in view of the fact that there are several infirmities in the prosecution case and there are arguable points involved in the appeal, as contended by the learned counsel for petitioner, and further, since the appeal is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the substantive portion of the sentence imposed on the petitioner is liable to be suspended.

Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute 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 (Chief Judicial Magistrate), Dhamapuri and on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-
22/03/2017

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
(CHIEF JUDICIAL MAGISTRATE),
DHARMAPURI

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 DEPUTY SUPERINTENDENT
OF POLICE, V & AC,
SPECIAL UNIT, SALEM

4 THE CHIEF JUDICIAL MAGISTRATE
DHARMAPURI (FOR INFORMATION)

C.C. to M/S.V.N.KRISHNAMURTHY Advocate on payment of necessary charges Sr.5405

Order

in
CRL MP.4284/2017

in
CRL A.165/2017

Date :22/03/2017

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rvr 05/04/2017