Crl.M.P.No.7637 of 2017
in
Crl.R.C.No.833 of 2017

N.SATHISH KUMAR, J.

The petitioners/A4 & A5, who are the appellants in C.A.No.218 of 2011 on the file of the VI Additional Sessions Judge, Chennai, which has been preferred as against the judgment in C.C.No.1123 of 2004 on the file of the learned Additional Chief Metropolitan Magistrate, Chennai, seek suspension of sentence of imprisonment.

2. Appreciating the evidence, oral and documentary, the learned Additional Chief Metropolitan Magistrate, Chennai convicted and sentenced the petitioners as under:

First petitioners/A4 & A5 :

Sl. No.	Conviction	Sentence
1.	Under section 120-B of IPC r/w.Sec.4(1)(e) r/w.23, Section 6 r/w.23 and sec.11 r/w.23 of FCR Act 1976	One year rigorous imprisonment months S.I and fine Rs.10,000/- in default to undergo three months simple imprisonment
2.	Under section 4(1)(e) r/w.23 of FCR Act 1976	Two years rigorous imprisonment and fine of Rs.10,000/- in default to undergo six months simple imprisonment
3.	Under Section 6 r/w.23 of FCR Act 1976	Two years rigorous imprisonment and fine of Rs.10,000/- to undergo six months simple imprisonment
4.	Under Section 11 r/w.23 of FCR Act 1976	Two years rigorous imprisonment and fine of Rs.10,000/- in default to undergo six months simple imprisonment. The sentences are to run

Sl. No.	Conviction	Sentence
		concurrently.

3. Challenging the same, petitioners preferred an appeal in C.A.No.218 of 2011 on the file of the VI Additional Sessions Judge, Chennai, which came to be dismissed under judgment dated 16.06.2016. Against such finding, the present revision has been filed.

4. Crl.M.P.No.7627 of 2017 has been filed seeking suspension of sentence imposed on the petitioners.

5. The learned counsel for the petitioners submitted that both the courts not at all appreciated the evidence properly and in fact the prosecution has not at all established the charges that the petitioners have received the amount from foreign sources and in the absence of connectivity of the petitioners with the foreign sources in receiving of the amount, the petitioners' conviction and sentence for the offenes under the section 120-B of IPC r/w.Sec.4(1)(e) r/w.23, Section 6 r/w.23 and sec.11 r/w.23 of FCR Act 1976 is not sustainable. He further submitted that the petitioners are residents of India and they are all along on bail during trial as well as during the appeal and hence submitted that the suspension of sentence of imprisonment may be granted to them. The learned counsel for the petitioners submitted that the petitioners have already surrendered before the court concerned.

6. Heard the learned counsel for the petitioner, learned Special Public Prosecutor for the respondent and perused the judgments of the trial court and the appellate court and perused the entire materials on record.

7. As per the case of the prosecution it appears that the petitioners have accepted contributions from foreign countries. The evidence adduced on the side of the prosecution prima facie appears to show that the contribution were received only from the Indian Muslims and it also appears from the evidence that it is not established that the Indian Muslims in fact are foreign citizens or not. To invoke the provision of Foreign Contribution (Regulation) Act 1976, the main criteria is foreign contribution made by any foreign source. The foreign source includes

(i) the Government of any foreign country or territory and any agency of such Government;

(ii) any international agency, not being the United Nations or any of its specialised agencies, the World Bank, International Monetary Fund or such other agency as the Central Government may, by notification in the Official Gazette, specify in this behalf;

(iii) a foreign company within the meaning of section 591 of the Companies Act, 1956 (1 of 1956) and also includes -

(a) a company which is a subsidiary of a foreign company, and

(b) a multi-national corporation within the meaning of this Act;

(iv) a corporation, not being a foreign company, incorporated in a foreign country or territory;

(v) a multi-national corporation within the meaning of the Act;

(vi) a company within the meaning of the Companies Act, 1956 (1 of 1956), if more than one-half of the nominal value of its share capital is held either singly or in the aggregate, by one or more of the following, namely -

(a) Government of a foreign country or territory,

(b) citizens of a foreign country or territory

(c) corporations in incorporated in a foreign country or territory,

(d) trusts, societies or other associations of individuals(whether incorporated or not), formed or registered in a foreign country or territory;

(vii) a trade union in any foreign country or territory, whether or not registered in such foreign country or territory;

(viii) a foreign trust by whatever name called, or a foreign foundation which is either in the nature of trust or is mainly financed by a foreign country or territory;

(ix) a society, club or other association of individuals formed or registered outside India;

(x) a citizen of a foreign country,

but does not include any foreign institution which has been permitted by the Central Government, by notification in the Official Gazette, to carry on the activities in India.

From the reading of the above definition, it appears that only if any contribution is received by the foreign source, the offence will made out.

8. In view of the above provision of law and arguments of the learned counsel for the petitioners and as I find some force on merits and as the revision is not likely disposed of immediately, I am inclined to suspend the substantive sentence of imprisonment alone.

9. Accordingly, pending revision, substantive sentence of imprisonment alone is suspended and the petitioners are released on bail on their executing a bond for a sum of Rs.20,000/- (Rupees twenty thousand only) with two sureties each for a like sum to the satisfaction of the Additional Chief Metropolitan Magistrate, Chennai with further condition that they shall appear before the said court on the first working day of every month at 10.30 a.m., until further orders.

30.06.2017

vrc

Note : Issue Order Copy today (30.06.2017)

N.SATHISH KUMAR, J.,

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NSKJ

Admit this revision. .

Notice to the respondent returnable by four weeks.

30.06.2017
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Crl.M.P.No.7628 of 2017
in
Crl.R.C.No.833 of 2017

NSKJ

Heard both sides.

2. The personal appearance of the petitioner is dispensed with. However, he shall appear before the trial Court as and when so ordered by the trial Court for any effective hearing.

30.06.2017

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Crl.M.P.No.7629 of 2017
in
Crl.R.C.No.833 of 2017

NSKJ

The learned counsel for the petitioners sought permission of this court to not press this petition and also made endorsement to that effect.

In view of the endorsement made by the learned counsel for the petitioners, this petition is dismissed as not pressed.

30.06.2017
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