

Crl.M.P.No.7641 of 2017
in
Crl.R.C.No.836 of 2017

N.SATHISH KUMAR, J.

The petitioner/A1, who is the first appellant in C.A.No.217 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 petitioner/A1 :

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

3. Challenging the same, petitioner preferred an appeal in C.A.No.217 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.7640 of 2017 has been filed seeking suspension of sentence imposed on the petitioner.

5. The learned counsel for the petitioner 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 petitioner has received the amount from foreign sources and in the absence of connectivity of the petitioner with the foreign sources in receiving of the amount, the petitioner conviction and sentence for the offences 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 petitioner is a resident of India and he is 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 him. The learned counsel for the petitioner submitted that the petitioner has 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 petitioner has 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 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 be made out.

8. In view of the above provision of law and arguments of the learned counsel for the petitioner and as I find some force on merits and as the revision is not likely to be 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 petitioner is released on bail on his 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 he 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

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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.

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NSKJ

The learned counsel for the petitioner 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 petitioner, this petition is dismissed as not pressed.

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