IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Nineteenth day of September Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice A.D.JAGADISH CHANDIRA

CRIMINAL MISCELLANEOUS PETITION Nos.11795 and 11793 of 2018

IN CRL RC.1007/2018

K.R.RAMAKRISHNAN [PETITIONER]

Vs

STATE REP BY [RESPONDENT]
THE INSPECTOR OF POLICE,
SPE, CBI, EOW, CHENNAI.
F.I.R.NO.RC.5(E)/2003.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.1007/2018 on the file of the High Court, the High Court will be pleased to

(i) exempt the petitioner from surrendering pursuit to the judgement in E.O.C.C.No.435 of 2004 dated 05.11.2008 on the file of Learned Additional Chief Metropolitan Magistrate, E.O.II, Egmore, Chennai conformed in Crl.A.No.312 of 2008 dated 28.04.2018, on the file of Principal Sessions Court at Chennai pending disposal the above Crl.R.C.No.1007/2018. [IN CRL.MP.NO.11795 OF 2018]

(ii) suspend the sentence imposed in E.O.C.C.No.435 of 2004 on the file of the learned Additional Chief Metropolitan Magistrate E.O.II, egmore, Chennai vide Order dated 05.11.2008 pending the disposal of Crl.RC.NO.1007 of 2018. [IN CRL.MP.NO.11793 OF 2018]

Order : These petitions coming on for orders upon perusing the petitions and the Memorandum of Grounds in Crl.Revision Case No.1007/2018 on the file of the High Court and upon hearing the arguments of M/S.N.CHANDRASEKARAN, Advocate for the petitioner and of MR.K.SRINIVASAN, SPECIAL PUBLIC PROSECUTOR FOR CBI CASES on behalf of the Respondent the court made the following order:-

The petitions have been filed to exempt the petitioner/A-5 from surrendering and suspend the sentence of imprisonment imposed in the judgment dated 05.11.2008 made in E.O.C.C.No.435 of 2004 on the file of the learned Additional Chief Metropolitan Magistrate, E.O.II Egmore, pending disposal of the appeal.

2. The petitioner herein is the 5th accused in E.O.C.C.No.435 of 2004 on the file of the learned Additional Chief Metropolitan Magistrate, E.O.II Egmore. He was found guilty of the offences u/s. 120B r/w 420, 467, 468, 471 IPC, 132 & 135 of Customs Act and he has been convicted and sentenced as under:

S.No.	Conviction	Sentence
1.	Section 120B r/w 420, 467, 468, 471 IPC, 132 & 135 of Customs Act.	3 years R.I and fine of Rs.1,000/- in default to undergo R.I for 2 months.
2.	467 IPC	3 years R.I and fine of Rs.1,000/- in default to undergo R.I for 2 months.

Aggrieved against the same, the petitioner has preferred this revision and also filed the petition for suspension of sentence.

3. The case of the prosecution is that, A1 to A5 along with deceased V.Kumar during the period 2002-03 at Chennai caused to be done illegal acts viz., to cheat the Government of India by way of getting ineligible Duty Entitlement Pass Book licences of fabrication of documents using false documents as genuine, false declaration of export cargo and evasion of customs duty and in pursuance of the criminal conspiracy, A1 to A4 along with unknown persons, fraudulently and dishonestly submitted 52 shipping bills as detailed mentioned in the charge sheet and further A1 to A5 fraudulently and dishonestly fabricated the bank realization certificate as if the bank realization certificate in the name of M/s.Prime Stones and Monuments, M/s.Shree Mahalakshmi Iron and Steels and M/s.Seven Star Global Logistics were issued by Bank of Saurashtra, George Town Branch, Chennai and Dhanalakshmi Bank, George Town Branch, Chennai, by affixing the fabricated rubber stamp of the Bank fraudulently and dishonestly gave false bank realization certificate of Dhanalakshmi Bank, George Town Branch without any authority and power to do so, and thereby enabled A1 to A4 to enforce the Bank realization certificate in order to get Duty Entitlement Pass Book Licence as if the accused have exported high quality printing inks to Singapore by making a false declaration in the shipping bills as well as invoices and other documents. Whereas the accused have exported only coloured water for which the said companies are not entitled for DEPB licence which was obtained by A1 fraudulently and for that A1 to A3 sold the said licence to various persons for monetory considerations and thereby enabled the bonafide purchaser to use the fraudulent DEPB licence in order to pay customs duty by way of adjustment and thereby caused wrongful loss of Rs.33,49,718/- to the Government of India and thereby A1 to A5 committed the offences punishable U/S 120B r/w 420, 467, 468, 471 of IPC and u/s 132 and 135 of the Customs Act and also the specific offences u/s 468, 467, 467 r/w 471, 420 of IPC and 132 and 135 of Customs Act.

4. The learned counsel for the revision petitioner would submit that, there are several infirmities in the judgment of the Trial Court as well as the Appellate Court. He would submit that the earlier statement recorded from A1 under the Customs Act has been marked as Ex.P17 wherein, he has specifically admitted to his guilt. It is in the form of a questionnaire wherein for answer to question No.6, A1 had admitted that he had forged the signature of the present petitioner in 3 BRC forms. He has also admitted that the rubber stamp (seal) were actually made with the local seal maker and affixed in the said BRC forms. When such being so, the Courts below have erred in relying on the evidence of P.W20 and P.W21 for having identified the signature of the petitioner. The learned Counsel for the revision petitioner would submit that in fact P.W20 and P.W21 have not worked with the revision petitioner in the bank at the relevant point of time and their statements cannot be believed. Further, when there is categorical admission of A1 with regard to the forgery, at the earliest point of time, the evidence of P.W51 the handwriting expert cannot be taken in to consideration. He would also submit that there are other arguable points in this case and he would also submit that the petitioner was on bail during trial and appeal and would submit that necessarily it will take some time for the matter to be listed for final hearing and thereby would pray for suspension of sentence.

5. The learned Special Public Prosecutor would submit that the petitioner/A-5 had been convicted for 3 years and would also submit that A3 and A4 have been acquitted by the appellate court. He would also submit that as per Ex.P17, the first accused had admitted to have forged the signature of the petitioner/A-5.

6. The learned counsel for the petitioner has also pointed to certain other infirmities in the judgments of both Courts below. There are arguable points in this session. The petitioner/A-5 is exempted from surrendering in view of the arguable points made out.

7. In view of the above the substantive sentence of imprisonment imposed on the petitioner/A-5 by the trial Court and confirmed by the appellate Court is hereby suspended till the disposal of the revision and the petitioner/A-5 is ordered to be enlarged on bail on his executing a bond for Rs.50,000/- [Rupees Fifty thousand only] with two sureties each for a like sum to the satisfaction of the learned Additional Chief Metropolitan Magistrate, E.O.II Egmore and on further condition that the petitioner/A-5 shall report before the above Court on the first working day of every English Calendar month at 10.30 a.m., until further orders.

-sd/-
19/09/2018

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 PRINCIPAL SESSIONS COURT,
CHENNAI.

2 THE ADDITIONAL CHIEF
METROPOLITAN MAGISTRATE,
E.O.II, EGMORE,
CHENNAI.

3 THE CHIEF METROPOLITAN
MAGISTRATE, EGMORE, CHENNAI.
[FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
SPE, CBI, EOW, CHENNAI.
F.I.R.NO.RC.5(E)/2003.

5 THE SPECIAL PUBLIC PROSECUTOR
FOR CBI CASES, HIGH COURT, MADRAS.

6 THE SECTION OFFICER,
CRIMINAL SECTION,
HIGH COURT, MADRAS.

[**Note to office:** Registry is directed to call for records and post the Criminal revision petition in the ususal course.]

+1C.C. to M/S.N.CHANDRASEKARAN Advocate on payment of necessary charges in SR.NO. 17753

Order
in
CRL MP.Nos.11795 and 11793 of 2018
in
CRL RC.1007/2018

Date :19/09/2018

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format

MLT-24/09/2018