IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the First day of October Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION Nos.5264 & 5266 of 2019

IN CRL.RC.NO.364 OF 2019

S.ANUSUYA [PETITIONER / ACCUSED]

Vs

THE INSPECTOR OF POLICE [RESPONDENT / COMPLAINANT]
SPE CBI EOW,
CHENNAI

Petitions praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.RC.No.364/2019 on the file of the High Court, the High Court will be pleased to

[i] suspend the sentence passed by the learned XVIII Additional Sessions Judge, Chennai in C.A.20 of 2015 by means of the judgment dated 07.12.2018 by confirming the judgment and sentence passed by the learned Additional Chief Metropolitan Magistrate, Egmore in C.C.No.6416 of 2017 dated 23.1.2015, pending disposal of Crl.RC.364/2019. [IN CRL.MP.5264/2019]

[ii] exempt the petitioner herein from surrendering before the trial Court in lieu of conviction and sentence passed by the learned XVIII Additional Sessions Judge, Chennai in C.A.20 of 2015 by confirming the conviction and sentence imposed upon her by the learned Additional Chief Metropolitan Magistrate, Egmore by means of his judgment dated 23.1.2015 in C.C.No.6416 of 2017 and exempt her from paying fine of Rs.1 Lakh, pending disposal of Crl.RC.364/2019. [IN CRL.MP.5266/2019]

Order : These petitions coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.RC.No.364/2019 on the file of the High Court and upon hearing the arguments of M/S.V.ANURADHA, 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 petitioner/A2 was convicted and sentenced by the the judgment of the learned Additional Chief Metropolitan Magistrate, Egmore in C.C.No.6416 of 2007 dated 07.12.2018. The trial court convicted the petitioner for the offence under section 120(b) r/w.420 IPC and sentenced her to undergo 5 years RI and to pay a fine of Rs.1,00,000/-, in default, to undergo RI for six months.

Aggrieved by the judgment of conviction and sentence passed by the trial court, she preferred appeal in Crl.A.No.20 of 2015 before the learned XVIII, Additional Sessions Judge, Chennai, who confirmed the sentence and conviction passed by the learned trial Judge, against which, the petitioner has preferred the present Criminal Revision petition seeking to set aside the judgment passed by the First Appellate Court, confirming the conviction and sentence imposed by the trial court.

2. Along with Criminal Revision, the petitioner has preferred Crl.M.P.No.5264 of 2019 seeking to suspend the sentence imposed by the lower appellate Court confirming the judgment of the trial court and Crl.M.P.No.5266 of 2019 seeking to exempt the petitioner from surrendering before the trial court.

3. At the time of arguments, learned counsel for petitioner submitted that due to oversight, the prayer seeking exemption of payment of fine amount of Rs. 1 lakh by the petitioner was mistakenly omitted to be mentioned in the petition. Hence, this Court permits the counsel for petitioner to incorporate the above said prayer in Crl.M.P.5266 of 2018 and the petition is corrected accordingly.

4. Thus in Crl.M.P.No.5266 of 2018, the petitioner also seeks for exemption of payment of fine amount of Rs. 1 lakh.

5. Originally there were three accused in this case, as per charge sheet. S.Rajesh @ S.Ramasubramanian is A1 in the chargesheet he is absconding, hence the case against him was split up in C.C.No.4017 of 2010 on 23.09.2010. Thereafter th petitioner had been made as A2.

6. The brief facts of the case is that Orient exports is a proprietorship concern with Smt.Kamaleshwaram Anuradha @ K.Anuradha (A1) in this case as the proprietrix and her husband S.Rajesh, the absconding accused as the authrosied signatory. The concern is a merchant exporter of rough granite blocks dealing with international operations branch of Canara Bank, Chennai. In pursuant to that current account No.CA 34 was opened during 1999. The Bank accounts were handled by the absconding accused Rajesh who was authorised to make, draw, accept, endorse and negotiate or otherwise sign any hundis, bills of exchange and promissory under or other negotiable instruments to operate or overdrawn on the above account with the bank and to receive the payments of all monies due to her.

7. The authorization letter dated 27.8.1999 was given by A1 to the Bank and it was signed by both A1 and S.Rajesh and countersigned by A1. The petitioner A2 entered into a criminal conspiracy with A1 during the period 2001 to 2004 to cheat the bank in furtherance of the said criminal conspiracy, S.Rajesh and A1 submitted loan proposal to bank and at the time of sanction A2 submitted false collateral security. A1 fradulently discounted the export bills worth Rs.186.40 lakhs and availed packing credit. In furtherance of the said criminal conspiracy, 16 export bills were submitted and got discounted by the absconding accused S.Rajesh and A1. This export proceeds were not credited and paid back to the Bank.

8. The averments against this petitioner /A2 is that she had offered her property at Plot No.97, and eastern half of Plot No.96 admeasuring in all 4200 sq.ft. At Kottivakkam village under Sub Registration District of Saidapet, Chennai as third party collateral security to the loan account of the concern. She had submitted a sworn affidavit before the special Metropolitan Magistrate, Egmore, Chennai, dated 04.03.2002. In the affidavit she had declared that she had not mortgaged the property earlier and that the property was free from encumbrance. In the letter addressed to the manager of the bank she had offered her property as mortgaged in the loan account of the concern. But investigation revealed that out of 4200 sq.f.t, 1980 sq.f.t., has already been settled by A2 in favour of her daughternamely A.Hemalatha in the year 1989. This is proved by the Sub Registrar, Adyar and also by Smt.A.Hemalatha. Also the whole of the proerty measuring 4200 sq.ft. Has also been mortgaged with M/s.REPCO bank, Adyar. These two aspects have been clarified as per the certificate of Encumbrance on property and document Nos.188/189 and No.818/99 duly attested by the Sub-Registrar. Further, she had also mortgaged this property with two other branches of Canara Bank (Kellys and Guindy, Chennai) in two different accounts viz. M/s. Venu Enterprises and M/s.RMN & Company against loans sanctioned by Canara Bank.

9. The prosecution had examined PW1 to PW28 and marked Ex.P.1 to Ex.P.113 and the defence had examined DW1 and DW2 and marked Ex.D1 to Ex.D4 and the accused when questioned under 313 Cr.P.C., on basis of incriminating evidence adduced, had denied the charges. On examination of the evidence of witnesses and the materials produced, the trial court had found A1 and A2 guilty and convicted for charge under section 120B r/w.420 IPC and sentenced as stated above.

10. The finding of the trial court as regards this petitioner as found in para 54 and 55 of its judgment is as follows;

> '54. One A. Hemalatha, PW17, the duaghter of A2 deposed in her chief examination that her mother A2 executed half of her proeprty at Kottivakkam in her name. It shows that A2 already settled her half of te property at Kottivakkam and later on he submitted her title deed as if she is the owenr of the entire property and cheated the bank.
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> 55. A2 executed a sworn statement, Ex.P.30, dated 04.03.2002 stating that she had equitably mortgaged the entire Kottivakkam property to the bank for the advances availed by the concern. Ex.P.28 is a letter evidencing deposit of her title deed submitted to the bank for the concern. Even after executing of her property at Kottivakkam A2 had equitably mortgaged the entire property at Kottivakkam. This act of a2 clearly shows that she joined with A1 to cheat the bank. Only for the purpose of cheating the bank A2 equitably mortgaged the entire property at Kottivakkam making the bank to believe that she is having full title over the entire property at Kottivakkam. On believing the act of A2 the bank

sanctioned advances to the concern of A1. Thus A2 with malafide intention submitted false security before the bank and cheated the bank.'

11. The contention of the petitioner is that the petitioner is a sickly aged person of 83 years, her age and illiteracy has been exploited by other accused. Her signature in documents were got by her husband being a dutiful wife she had to sign and she is not aware of any of the happenings of the case. Further, it is submitted that the original documents have not been produced in this case and only Photostat copy of the documents have been marked which have been objected by the petitioner, no finding has been given by the trial court. None of the original documents have been seized in this case. Further the original guarantor in this case is one Mukundan has been allowed to go free to save the said Mukundan, the Photostat copy of the petitioner's document have been replaced and the petitioner has been made as a scape goat. The value of security for the property has been settled and the documents thereafter is of no consequence. Further the lower court as well as the lower appellate court has not given any finding with regard to conspiracy between the petitioner and other accused. This Court finds that there are arguable points in favour of the petitioner.

12. The Special Public Prosecutor, CBI has filed his counter stating that the prosecution had proved their case against the petitioner and other accused.

13. Heard both sides and perused materials available on record.

14. As regards their prayer of exemption of surrender and payment of fine, the petitioner was directed to present before this Court. She had been produced by her widowed sister in law in a wheel chair and the identity of the petitioner has been verified.

15. Even during questioning of the accused under section 313 Cr.P.C., in the year 2015, the petitioner had stated that she was 83 years and she had signed in the documents only on the instruction of her husband. Now the petitioner is aged around 89 years, she also appears fragile and sick. Further, she is without any income deserted by her children and she had also lost her husband 5 years back and she is now taken care of by her widowed sister-in-law. She is unable to even met out her regular medical expenses.

16. Considering the facts and circumstances of the case and the earlier decision of this Court in the case of Easwaramurthy Vs. N.Krishnaswamy (2006) CRI.L.J.4105 which in turn relied on the decision of the Apex Court in Bihari Prasad Singh Vs. State of Bihar (2000) SCC (Cri) 1380, this Court considers that the petitioner shall not be required to surrender before the trial court in lieu of conviction and sentence passed by the lower appellate court in C.A.No.20 of 2015 dated 23.1.2015 pending disposal of the main revision.

17. Considering the special circumstances prevailing in this case, the petitioner, being an indigent person, this court is inclined to exempt the petitioner from paying fine amount of Rs.1,00,000/- as ordered by the courts below and she is discharged from executing bond without sureties. The sentence of imprisonment imposed on the petitioner is hereby suspended till the disposal of the above Revision.

18.The petitions are ordered accordingly.

-sd/-
01/10/2019

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 XVIII ADDITIONAL SESSIONS COURT
CHENNAI

2 THE ADDITIONAL CHIEF METROPOLITAN
MAGISTRATE, EGMORE, CHENNAI

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

4 THE INSPECTOR OF POLICE
SPE CBI EOW, CHENNAI

5 THE SPEICAL PUBLIC PROSECUTOR
FOR CBI CASES, HIGH COURT, MADRAS

C.C. to M/S.T.SURENDRAN Advocate on payment of necessary charges

Order

in
CRL MP.Nos.5264 & 5266/2019

in
CRL.RC.364/2019

Date :01/10/2019

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