IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Third day of September Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M.NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.13608 of 2019

IN CRL A.633/2019

1 S.ARIVARASU [PETITIONERS]
2 A.SENTHILMANI
3 K.RAVICHANDRAN
4 T.ASHOKAN
5 R.PURUSHOTHAMAN

Vs

STATE REP. BY [RESPONDENT]
INSPECTOR OF POLICE,
CBI/SCB/CHENNAI,
R.C.NO.6(2)/2010.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.633/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence passed by the II Additional District Judge (CBI Cases), Coimbatore in C.C.No.8 of 2011 dated 28.08.2019 by convicting the Petitioner-1/Appellant-1 to undergo Rigorous Imprisonment for Two years and to pay a fine of Rs.5000/- in default to undergo six months simple imprisonment for the alleged offences under Sec.120-B r/w.420, 467, 468, 471 and 472 IPC and under Section 13(1)(d) r/w.13(2) of the Prevention of Corruption Act, 1988 and the 1st petitioner was also convicted and sentenced to undergo Rigorous Imprisonment for Two years and imposed a fine of Rs.5,000/- and to undergo six months of simple imprisonment for each of the substantive alleged offences punishable under Sec.420, 471 IPC and under Sec.13(1)(d) r/w.13(2) of the Prevention of Corruption Act, 1988, Petitioners 6 to 9/Appellants 2 to 5 to undergo Rigorous imprisonment for Two years and imposed a fine of Rs.5,000/- in default to undergo 6 months simple imprisonment for the alleged offences under Sec.120-B r/w.420, 467, 468, 471 and 472 IPC and under Section 13(1)(d) r/w.13(2) of the Prevention of Corruption Act, 1988 and further convicted them Rigorous Imprisonment for two years each and to pay a fine of Rs.5,000/- each in to default to undergo simple imprisonment for six months each for each of the substantive alleged offences punishable under Sec.420, 467, 468, 471, 472 IPC pending disposal of this Crl.A.No.633/2019.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.633/2019 on the file of the High Court and upon hearing the arguments of M/S. K.KANNAN, Advocate for the petitioners and of MR.K.SRINIVASAN, SPECIAL PUBLIC PROSECUTOR (CBI CASES), on behalf of the Respondent the court made the following order:-

This Criminal Appeal has been filed by the petitioners/ accused Nos. 5 to 9 respectively against the Judgment of conviction and sentence passed by the learned II Additional District Judge, (CBI Cases), Coimbatore dated 28.08.2019 in C.C.No.8 of 2011. The conviction and sentence imposed by the trial court are tabulated below;

petitioner	array of rank	conviction	sentence
1st petitioner	A5	(i) for offence u/s.120-B, r/w.420, 467, 468, 471 and 472 IPC and u/s.13(1)(d) r/w.13(2) of Prevention of Corruption Act, 1988 (ii)substantive offences punishable u/s.420, 471 IPC and u/s.13(1)(d) r/w.13(2) of the Prevention of Corruption Act, 1988	to undergo RI for two years and to pay a fine of Rs.5000/-, in default, to undergo SI for six months RI for two years and fine of Rs.5000/-, in default, to undergo SI for six months
2nd petitioner 3rd petitioner 4th petitioner 5th petitioner	A6 A7 A8 A9	(i) for offence u/s.120-B, r/w.420, 467, 468, 471 & 472 IPC and Section 13(1)(d) r/w.13(2) of the Prevention of Corruption act, 1988 and (ii)substantive offences punishable u/s.420, 467, 468, 471, 472 IPC	to undergo RI for two years each and a fine of Rs.5000/- each, in default, to undergo SI for six months each to undergo RI for two years each and a fine of Rs.5000/- each, in default, to undergo SI for six months each.

Total fine imposed against A5 is Rs.20,000/-. Total fine imposed against A6 to A10 is Rs.30,000/- each. The sentence imposed on the petitioners for each offence were ordered to run concurrently.

2. .The gist of the case is as follows;

(i) M/s.Global Trade Finance limited (in short 'GTFL') is a finance company engaed in providing finance facility to the clients on producing trade documents evidencing sale made to the buyers such as invoices, despatch challans etc. It had sanctioned trade finance facilities to the tune of Rs.2,55 crores to A1 company on 11.2.2008. The directors of A1 company are A2, A3, A4, who, in active connivance with A5, the 1st petitioner herein, employed as Business Development Manager of SBI Global Factors Limited, cheated the said finance company by submitting Debtor Introductory Letters in the names of non-existing debtors/buyers , thereby made the finance company to release Rs.3.53 crores to the account of A1 company and caused loss of Rs.3.53 to finance company.

(ii) A6 who is the close friend of A2 had submitted Debtor Introductory letter to GTFL, wherein, he signed as proprietor of M/s.Sri Selvanayagi Amman Textiles, thereby the helped A2 and A3 in preparing false invoices.

(iii) A7, who is a close of friend of A2 and A3 executed Debtor Introductory Letter to GTFL, as though he is a partner of M/s.Varthaman Fabtics, Erode, which is a non-existing firm and also signed in all invoices.

(iv) A8, who is a close of friend of A2 and A3 executed Debtor Introductory Letter of M/s.Meridean Integrated Fibres, Tanjore, which was a non existing firm and opened account in the name of said firm in the name of one Suresh kumar and Tamilselvan and as per the direction of A2, they authorised A8 to operate the said bank account .

(v) A9 who is a friend of A2 and A3 executed Debtor Introductory Letter as a pernter of non-existing firm M/s.Saran Textiles, Udumalpet and the same was used by other accused to cheat GTFL.

(vi) During March 2008 to July 2008, an amount of Rs.5,54,46,749.56/- was factored to A1 company by GTFL and out of the said amount Rs.3,19,44,980/- was received back by GTFL and Rs.3,53,01,425/- was still outstanding without repayment. A1 company represented by A2 to A4 entered into a criminal conspiracy with A5 to A10, dishonestly prepared false documents and invoices and availed factoring facility to the tune of Rs.3,53,01,425/- and thereby caused wrongful loss to SBI Global Factors, thus they have committed offences punishable under section 120-B r/w.420, 467, 468, 471 and 472 and section 13(2) rw.13(1)(d) of the Prevention of Corruption Act, 1988 and substantive offences under section 420, 467, 468, 471 and 472 IPC and u/s.13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988.

3 .The learned counsel for the petitioners would submit that the 1st petitioner is an employee of private sector, hence the ingredients of offence under Prevention of Corruption Act would not attract. Further the loan application submitted by A2 to A4 on behalf of A1 was approved by the 1st petitioner, the Head of SBI Global Factors Limited. Further had the right to approve or reject the loan application. In this case they have approved the loan application and as regards the other petitioners, they are only buyers and they have not approached the Global Trading Finance Limited and they have been roped in this case as though they have faciliatated the other accused in diverting the loan amount.

4. Further, the trial Court failed to take note that the loan amount of seven crores out of which 3.5 crores had been repaid not only by the other accused but also by the petitioners and there is no question of cheating. Further the prosecution have not submitted any documents, for which, the accused could not be charged and tried for the offence of forgery or for using forged documents. It is also admitted that already a civil suit has been filed before the Bombay High Court and case has been filed under section 138 of

Negotiable Instrument Act, hence the question of cheating and forgery would not arise. He would further submit that there are arguable points in this appeal and there is a fair chance of success. Hence he prayed for suspension of sentence till the disposal of the appeal.

5.The learned Special Public Prosecutor, CBI appearing for the respondent submitted that the trial Court on consideration of the gravity of the offence had reached it's conclusion holding the appellants are guilty of the offences. There are enough materials by way of oral and documentary to show that the appellants had acted in connivance with each other and committed the offence. Mere repayment of loan amount will not absolve the accused from criminal liability. Hence he opposed the bail application of the appellants. He would further submit that the sentence imposed on the accused have been suspended by the trial court, till 27.09.2019.

6.Considering the facts and circumstances of the case and nature of the offence and also taking note of the fact that the entire fine has been paid and Rs.3.5 crores have been repaid out of loan amount of 7 crores and further there are arguable points involved in this appeal, this Court is inclined to suspend their substantive sentence of imprisonment alone till the disposal of the appeal.

7.Accordingly the sentence of imprisonment imposed on the petitioners/A5 to A9 are suspended till the disposal of the appeal and the petitioners are ordered to be enlarged on bail, on condition that they shall execute a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) each with two sureties, each for a like sum to the satisfaction of the learned II Additional District Judge, CBI Cases, Coimbatore.

8.Further the petitioners/ are directed to appear before the trial Court on the first working day of every month at 10.30 a.m.

-sd/-
23/09/2019

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 THE II ADDITIONAL DISTRICT JUDGE (CBI CASES), COIMBATORE

2 THE SPECIAL PUBLIC PROSECUTOR FOR CBI CASES, HIGH COURT, CHENNAI

3   THE INSPECTOR OF POLICE,
CBI/SCB/CHENNAI.

+5 C.C. to M/S. K.KANNAN Advocate on payment of necessary charges
SR.No.19739

Order

in
CRL MP.13608/2019

in
CRL A.633/2019

Date :23/09/2019

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