

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 No.14142 of 2019

IN CRL A.663/2019

1 P.M.THANAKOTTY

[PETITIONER]

2 M.K.KARUPPAN

Vs

STATE REP.BY

[RESPONDENT]

THE INSPECTOR OF POLICE,
VIGILANCE AND ANTI-CORRUPTION,
SALEM.

(CR.NO.9/AC/2003/SL)

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.663/2019 on the file of the High Court, the High Court will be pleased to enlarge them on bail by suspending the sentence imposed by the Special Judge, special court for trial of cases under the Prevention of Corruption Act, Salem made in Spl.CC.No.94 of 2014 by its judgment dated 19.09.2019 pending disposal of the above appeal.[CRL.MP.NO.14142/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.663/2019 on the file of the High Court and upon hearing the arguments of M/S.M.RAJ KUMAR, Advocate for the petitioner and of MR.K.PRABAKAR Additional public prosecutor on behalf of the Respondent the court made the following order:-

The petitioners/A1 and A2 were convicted and sentenced by the learned Special Judge, Special Court for trial Cases under the Prevention of Corruption Act, Salem in Spl.C.C.No.94 of 2014 on 19.09.2019. Aggrieved against the order of trial court, the petitioners/A1 and A2 have preferred appeal in Crl.A.No.663 of 2019 before this Court.

2. The conviction and sentence imposed by the trial court on the petitioners is as follows;

rank	conviction	sentence
1st petitioner/A 1	u/s.120 (B) IPC	to undergo 3 months RI and to pay a fine of Rs.2000/-, in default, to undergo SI for one month
	u/s.167 IPC	to undergo 1 year RI and to pay a fine of Rs.2000/-, in default, to undergo SI for one month
	u/s.420 IPC	to undergo 2 years RI and to pay a fine of Rs.2000/-, in default, to undergo SI for 6 months
	u/s.409 IPC	to undergo 2 years RI and to pay a fine of Rs.2000/-, in default, to undergo SI for 6 months
	u/s.468 IPC	to undergo 2 years RI and to pay a fine of Rs.2000/-, in default, to undergo SI for 3 months
2 nd petitioner/A 2	u/s.120 (B) IPC	to undergo 3 months RI and to pay a fine of Rs.2000/-, in default, to undergo SI for one month
	u/s.167 IPC	to undergo 1 year RI and to pay a fine of Rs.2000/-, in default, to undergo SI for one month
	u/s.420 IPC	to undergo 2 years RI and to pay a fine of Rs.2000/-, in default, to undergo SI for 6 months
	u/s.409 IPC	to undergo 2 years RI and to pay a fine of Rs.2000/-, in default, to undergo SI for 6 months
	u/s.468 IPC	to undergo 2 years RI and to pay a fine of Rs.2000/-, in default, to undergo SI for 3 months

The petitioners/A1 and A2 were imposed total fine amount of Rs.10,000/- each and the sentences were ordered to run concurrently.

3. Along with the Criminal Appeal, they have preferred Crl.M.P.No.14142 of 2019 seeking suspension of substantial sentence of imprisonment imposed on them. The petitioners have already paid the fine amount imposed on them.

4. The case of the prosecution is that the 1st petitioner was working as the Secretary of Mettur Chemicals Employees Co-op. Industrial Housing Society Ltd., Mettur, Salem District and the 2nd petitioner was working as President at the said Society from 16.6.1997 to May 2001. An extent of 15.71 acres of land was purchased by Housing Society in Raman Nagar in the year 1959, out of which 182 houses were constructed after availing loan from the Tamilnadu housing Board and the said houses were given to the members of the Society and the remaining land measuring 1,20,616 sq.ft. were kept for public use. The 2nd petitioner on coming to know about

the same through 1st petitioner, after obtaining consent through resolution from Society, divided the said area into 33 house plots after retaining 10% of the vacant land for the society and sold the house site plots to 33 interested ineligible members through incorrect document who were not completed 5 years as members without adopting the formalities and rules mentioned in the by-laws of the society and also failed to obtain prior permission from the Registrar, Housing, Chennai and approval from Veerakkal Pudur Town Panchayat and they with an intention to obtain pecuniary advantage for them, with the active assistance and abettment of A3 and A4 who are the Assistant and Sub Registrar respectively of Mettur Dam, SRO and registered 33 incorrect house site sale deed documents in four days by violating the norms fixed in the G.O.ms.No.2179 dated 29.6.1996 and allowing 12% stamp duty charge exemption for the ineligible claimants without verifying the guideline value and caused wrongful loss of stamp duty of Rs.4,79,404/- to the government and also misappropriated the amount along with the amount of Rs.64,320/- which was paid by the 33 purchasers to the petitioners. Thus the petitioners along with A3 and A4, being public servants committed criminal conspiracy and misappropriated the amount and cheated and caused wrongful loss to the government and committed criminal misconduct by abusing their official position. Thus they were charged for the offence punishable under section 120(B) r/w.167, 409, 420 and 468 IPC r/w. And 13(2) r/w.13(1)(c) and (d) of the Prevention of Corruption Act, 1988.

5.The learned counsel for the petitioners would submit that the trial court in the absence of any evidence or personal gain over the allotment of housing plots to 32 allottees and after cancellation of allotment and refund of the money paid by them to the society has erroneously convicted the appellant. Further the witnesses belonging to the Society and the cooperative department have nothing spoken about the motive of the petitioners for allotment, but the trial court has erroneously convicted the petitioners and sentenced them. He would further submit that the petitioners have arguable points and has fair chance of success in this appeal. Thus he prayed for suspension of substantive sentence of imprisonment imposed on them till the disposal of the appeal.

6.The learned Addl. Public Prosecutor appearing for the respondent would submit that the trial Court on appreciating the oral and documentary evidence in proper perspective has come to the correct conclusion that the petitioners/A1 and A2 have acted in sheer violation of the society bye laws in executing the sale deeds and cancelation of the documents does not absolve the petitioners from the charges levelled against them, thereby, it has rightly convicted and sentenced the petitioners. He would further submit that before the trial court, the sentence has been suspended till 19.10.2019. Thus he opposed the bail application of the petitioners.

7.Considering facts and circumstances of the case and gravity of the offence and further there are arguable points involved in this appeal, this Court is inclined to suspend the substantive sentence

of imprisonment alone imposed on the petitioners till the disposal of the appeal.

8. Accordingly the substantial sentence of imprisonment imposed on the petitioners/A1 and A2 alone is suspended till the disposal of the appeal. The petitioners are enlarged on bail, on condition that they shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties each for like sum to the satisfaction of the learned Special Judge, Special Court for trial of cases under the Prevention of Corruption Act, Salem.

9. Further the petitioners are directed to appear before the trial Court on first working day of every month until further orders.

-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 THE SPECIAL JUDGE
SPECIAL COURT FOR TRIAL CASES UNDER THE
PREVENTION OF CORRUPTION ACT, SALEM

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
VIGILANCE AND ANTI-CORRUPTION,
SALEM.

+1 C.C. to M/S.M.RAJ KUMAR Advocate on payment of necessary charges SR.NO. 20404

WEB COPY
Order
in
CRL MP.14142/2019

in
CRL A.663/2019

Date :01/10/2019

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RD 04/10/2019