

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Third day of October Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.14258 of 2019

IN CRL A.674/2019

1 B.BALACHANDRAN
2 B.BANUMATHI

[PETITIONERS]

Vs

STATE REP BY
THE INSPECTOR OF POLICE
VIGILANCE AND ANTI-CORRUPTION,
COIMBATORE.
CR.NO.5/2006/AC/CB.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(i) To suspend the sentence of imprisonment made in Special . C.C.No.58 of 2011 on the file of the Special court for trial of Prevention of Corruption Act, Coimbatore, convicting the 1st appellant under section 13 (12) r/w 13(2) r/w 13(1)(e) of prevention of Corruption Act 1988 to undergo Rigorous Imprisonment for a period of 2 years and to pay a fine of Rs.50,000/- and in default to undergo Simple Imprisonment for a period of 3 months.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.S.ASHOK KUMAR, Senior Counsel, for M/S.K.R.SANKARAN, 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 are A1 & A2. A1 found guilty, convicted and sentenced for the offence u/s.13(2) r/w 13(1)(e) of Prevention of Corruption Act, 1988 to undergo 2 years Rigorous Imprisonment with fine of Rs.50,000/- in default, he has to undergo Simple Imprisonment for a period of 3 months. A2 found guilty, convicted and sentenced for the offence u/s.109 IPC r/w u/s.13(2) r/w 13(1)(e) of Prevention of Corruption Act 1988 to undergo 2 years Rigorous Imprisonment with fine of Rs.50,000/- in default, she has to undergo simple imprisonment for a period of 3 months by the Special Judge, Special Court for Trial of Prevention of Corruption Act at Coimbatore by the Judgement dated

19.09.2019 in Spl.C.C.No.58 of 2011. Hence, the petitioners seek suspension of sentence.

2.Crl.M.P.No.14258 of 2019 has been filed seeking suspension of sentence imposed on the petitioners.

3.The learned Senior counsel for the petitioners submit that there are several infirmities and inconsistencies found in the prosecution case. It is contended that there are contradictions in the material particulars between the evidence of the prosecution witnesses. The case is that during the check period from 01.10.1995 to 31.12.1998, the 1st petitioner served as a Municipal Commissioner at Tiruppur, Ooty and Erode and was found in possession of properties and assets in his name and in the name of his wife, the 2nd petitioner herein to the tune of Rs.47,94,394/-, for which he could not give explanation. The Trial Court on examination of witnesses PW1 to PW16 and upon relying on Ex.P1 to Ex.P45 and DW1 to DW3 and Ex.D1 to Ex.D11 had convicted the accused, the petitioners herein as above.

4.The contention of the petitioners is that the petitioners through the cross examination of prosecution witnesses and by examination of defence witnesses, of which DW1 is the first petitioner and DW2 is the brother of the 2nd petitioner and DW3 is the uncle of the 2nd petitioner, who have categorically stated about the properties in the name of the 2nd petitioner as well as the amounts given to the 2nd petitioner for construction of the house and purchase of other properties as well as the corresponding entries through the Bank and by cheque have also been disclosed.

5.The contention of the first petitioner is that the first petitioner's brother as well as his father were running chit business in Madurai and the income derived from the business has not been taken into account. His father in law was running an Industry in the name of Coimbatore Industries and doing Motor and Pump set business with his brother in law and the 2nd petitioner is working as Inspection Manager in V-four Export Company and had separate income and her income had been disclosed in the income tax returns which are contemporary documents. No final opportunity, notice was served on the 2nd petitioner. The Lower Court accepted the same and had convicted and given a finding against the petitioners. The Lower Court has suspended the sentence of the petitioners till 19.10.2019.

6.The learned Additional Public Prosecutor appearing for the respondent submitted that the trial Court on consideration of the gravity of the offence had reached its conclusion holding the petitioners guilty of the offences. There are enough materials by way of oral and documentary to show that the petitioners had acted in connivance with each other and committed the offence. Hence he opposed the bail application of the petitioners. He would further submit that the sentence imposed on the petitioners have been suspended by the trial court till 19.10.2019.

the Additional Public Prosecutor appearing for the respondent. On their submissions and on perusal of the materials, It is seen that there are arguable points involved in the appeal as contended by learned counsel for petitioners and further the appeal is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the petitioners herein are entitled to the relief of grant of suspension of sentence.

8. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioners are directed to be enlarged on bail on condition that the petitioners shall execute a bond in 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 Special Court for Trial of Prevention of Corruption Act, Coimbatore and on further condition that the petitioners shall appear before the said Court on the first working day of every month at 10.30 a.m. Pending Appeal.

-sd/-

03/10/2019

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 OF PREVENTION OF
CORRUPTION ACT AT COIMBATORE.

2 THE INSPECTOR OF POLICE
VIGILANCE AND ANTI-CORRUPTION,
COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 C.C. to M/S.K.R.SANKARAN Advocate on payment of necessary
charges SR.NO.20651

Order

in

CRL MP.14258/2019

in

CRL A.674/2019

Date :03/10/2019

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