

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Sixteenth day of October Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.14715 of 2019

IN CRL A.702/2019

P.GANESAN

[APPELLANT / ACCUSED]

vs

STATE REP.BY

[RESPONDENT / COMPLAINANT]

INSPECTOR OF POLICE, V AND AC,
VILLUPURAM, .
CR.NO.1 OF 2012.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.702/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence awarded in Spl.Case No.39 of 2014 dated 30.09.2019 on the file of the Special Court for the cases under Prevention of Corruption Act at Villupuram enlarge him on bail till the disposal of the above Crl.A.No.702/2019.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.702/2019 on the file of the High Court and upon hearing the arguments of M/S.K.SUKUMARAN, Advocate for the petitioner and of M/S.M.PRABAVATHY, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

This Criminal Appeal has been filed by the petitioner/ accused against the Judgment of conviction and sentence passed by the Special Court for Prevention of Corruption Act Cases, Villupuram, dated 30.09.2019 in Special Case No.39 of 2014. The conviction and sentence imposed by the trial court are tabulated below;

petitioner	conviction	sentence
Petitioner/ single accused	(i) for offence u/s.7 of Prevention of Corruption Act, 1988	to undergo RI for three years and to pay a fine of Rs.1000/-, in default, to undergo SI for three months.
	(i) for offence u/s.13 (2) r/w.13(1) (d) of Prevention of Corruption act, 1988	to undergo RI for three years each and a fine of Rs.5000/- each, in default, to undergo SI for six months.

The sentence imposed on the petitioner for each offence were ordered to run concurrently.

2. Along with the appeal, the petitioner has preferred the present Crl.M.P. No.14715 of 2019 seeking suspension of substantial sentence of imprisonment alone imposed on him.

3. The case of the prosecution is that the petitioner was working as Assistant Agricultural Officer, Somandargudi, Kallakurichi Block, Villupuram District during the period between 17.5.2010 and 02.03.2012. It is alleged that on 17.2.2012, the accused demanded money from the defacto complainant while entrusting a cheque for a sum of Rs.17,500/- to him towards the subsidy granted for coconut plantation. Again on 19.12.2012, 20.2.2012, 21.2.2012, 23.2.2012 and 24.2.2012 the accused made repeated demands that he should pay Rs.10,000/-. Hence the defacto complainant made a complaint with Vigilance and Anti Corruption Wing, Villupuram, in pursuance of which, a trap was laid and accordingly, the defacto complainant went to the office of the petitioner/accused as per the instructions of the Vigilance and Anti Corruption authorities, where, on demand made by the accused/petitioner, he have gave him Rs.7500/- and made a prearranged signal to the trap team, who caught him red-handed. Phenolphthalein test proved positive. Therefore, the petitioner, on reiterating his earlier demand obtained illegal gratification other than legal remuneration abusing his official position. Thus he was charged for the offences punishable under section 7 and 13(2) r/w.13(1) (d) of Prevention of Corruption Act.

4. The contention of the petitioner is that there was no demand by the petitioner and the amount obtained was only for office expenses. The subsidy amount had already been granted and there was no necessity for him to make a demand for subsidy amount. Further there is no reasons given as to how initial demand of Rs.10,000/- has been reduced to Rs.7,500/-. PW3 the accompanying witness has not spoken to about the material aspects and corroborating evidence of PW2. PW1 the sanctioning authority's sanction order is not proper for the reason that on the same day of the trap, vigilance report had reached the sanctioning authority. Based on that report, sanction has been granted. When the entire trap proceedings had commenced in the afternoon and went up till the whole day in the evening hours, it is highly improbable to state that on the same day, the report is prepared and the same has reached the sanctioning authority. Hence the sanction is without application of mind and the sanction has been granted mechanically.

5. He would further contend that the statement recorded under section 161 Cr.P.C., could not have been recorded in the manner as stated by PW1 which is one of the factor which waived against the petitioner in granting sanction by PW1. The learned trial Judge has not considered the above said points which would go to the roof of the case.

6. Further it is contended that the evidence of DW1 had not been looked into by the trial Court. DW1-Watchman in the godown where the trap amount has been paid had categorically states that PW2 had not come earlier and hence there is no demand earlier. Further this creates doubt in the manner of trap proceedings being projected. It is also submitted that DW1 had not been cross examined by the prosecution and his evidence stands untainted. In view of the same, the trial court ought to have looked into the evidence of DW1, which it failed to do so. He would further submit that the trial court had suspended the sentence of imprisonment of the petitioner till 17.10.2019 and the fine amount had already been paid. The petitioner has arguable points and has fair chance of success in the appeal. Thus he prayed for suspension of substantial sentence of imprisonment imposed on the petitioner.

7. The learned Additional Public Prosecutor submits that the prosecution has examined PW1 to PW11 and marked exhibits Ex.P.1 to P.27 and the defendant had examined DW1. She would further submit that the trial court had already suspended the sentence of imprisonment till 17.10.2019.

8. Considering facts and circumstances of the case and the gravity of the offence and there are arguable points involved in this appeal, this Court is inclined to suspend the substantive sentence of imprisonment alone till the disposal of the appeal.

9. Accordingly the sentence imposed on the petitioner is suspended till the disposal of the appeal and the petitioner is ordered to be 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 a like sum to the satisfaction of the learned Special Court for Prevention of Corruption Act Cases, Villupuram.

10. Further the petitioner is directed to appear before the trial Court on first working day of every month at 10.30 a.m., until further orders.

-sd/-

16/10/2019

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 COURT FOR
PREVENTION OF CORRUPTION ACT CASES,
VILLUPURAM.

2 THE PUBLIC PROSECUTOR
(V AND AC) , HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
V AND AC, VILLUPURAM.

+1C.C. to M/S.K.SUKUMARAN Advocate on payment of necessary
charges SR.No.21264

Order

in
CRL MP.14715/2019

in
CRL A.702/2019

Date :16/10/2019

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cs 17/10/2019



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