

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Nineteenth day of November Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION Nos.16973 and 16978 of 2019

IN CRL A.Nos.790 and 791/2019

G.ANITHA

[PETITIONER/APPELLANT IN
CRL.A.No.790/2019]

K.BASKAR

[PETITIONER/APPELLANT IN
CRL.A.No.791/2019]

Vs

STATE REP.BY

[RESPONDENT IN BOTH THE PETITIONS]

INSPECTOR OF POLICE,
CENTRAL BUREAU OF INVESTIGATION,
SPE, CBI, ACB, CHENNAI.

Petitions praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.Nos.790 & 791 of 2019 on the file of the High Court, the High Court will be pleased to suspend the sentence passed in C.C.No.30/2011 dated 07.11.2019 on the file of IX Additional Special court for CBI Cases, Chennai pending disposal of the above Crl.A.Nos.790 & 791 of 2019.

Order : These petitions coming on for orders upon perusing the petitions and the Memorandum of Grounds in Crl.A.Nos.790 & 791 of 2019 on the file of the High Court and upon hearing the arguments of M/S B.KUMAR, SENIOR COUNSEL FOR M/S.B.SHRUTHAN, 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 in Crl.M.P.No.16978 of 2019 is A1 and petitioner in Crl.M.P.Nos.16973 of 2019 is A2 respectively in C.C.No.30 of 2011 on the file of IX Addl. Special Judge for CBI Cases, Chennai. They have filed the Crl.A.Nos.791 and 790 of 2019 respectively against the Judgment of conviction and sentence passed by the trial court by its order dated 07.11.2019, in C.C.No.03 of 2014. The conviction and sentence imposed on the petitioners/A1 and A1 are tabulated below;

Rank of petitioners	Conviction	sentence
A1/appellant in Crl.A.No.791 of 2019	For the offence under section 13 (2) r/w.13(1)(e) of Prevention of Corruption Act, 1988	To undergo rigorous imprisonment for two years and to pay a fine of Rs.1,00,000/-, in default, to undergo Simple Imprisonment for 6 months
A2/appellant in Crl.A.No.790 of 2019	For the offence under section 109 IPC r/w.13(2) r/w.13(1)(e) of Prevention of Corruption Act, 1988.	To undergo Rigorous Imprisonment for one year and also to pay a fine of Rs.50,000/-, in default, to undergo Simple Imprisonment of three months

The fine amount was already paid by the petitioners.

2. Pending Appeal, the petitioners filed the present petitions seeking suspension of sentence imposed on them by the trial court, pending disposal of the appeals.

3. The case of the prosecution against the petitioners/A1 and A2 is that A1 is the husband of A2. A1 was employed as Superintendent of Customs, Unaccompanied Baggage Unit, AIR Cargo Complex, Chennai during July 2009. A2 is a homemaker and she has no other source of income other than the salary income of her husband.

(ii) During the check period between 1.1.2004 to 26.11.2009, the accused persons/petitioners were found in possession of assets as on 1.1.2004 to the tune of Rs.4,60,534/-, they were found in possession of wealth and assets to the extent of Rs.1,11,81,714/- as on 26.11.2009, they have earned income to the extent of Rs.13,98,417.47, A1 and A2 incurred expenditure of Rs.10,56,026/- during the check period. Thus the first accused, while working in customs department in various capacities, had acquired assets and pecuniary resources which are disproportionate to their known sources of income to the extent of Rs.1,03,78,789/- .

(iii) Thus the accused persons are found to be in possession of assets worth Rs.1,03,78,789/- which are disproportionate to the known sources of income of A1, for which, he could not satisfactorily account for. The possession of disproportionate assets as stated above by the accused persons constitute the offence punishable under section 109 IPC r/w.13(2) r/w.13(1)(e) of Prevention of Corruption Act, 1988.

4. Learned counsel for the petitioner in Crl.M.P.No.16973 of 2019/A1 would submit that the petitioner was earlier employed in Bank and she had independent source of income which was not looked into by the trial court. Further the petitioner's income and assets at the beginning of the check period had not been taken into account. The house property of the petitioner had been valued on a higher scale

for the purpose of the case. DW1 a qualified chartered engineer, who was examined as a witness, had assessed the correct value, which the trial court had not adverted to. DW2, father of the petitioner was employed in Public Sector Undertaking and the petitioner's mother had enough source and means to help the petitioner who on examination stated about these factors. The evidence of the defence witnesses have not been considered by the trial court as well the explanation offered by her. Despite, evidences let in by the petitioner and probablised her case by preponderance of probabilities, the same has not been considered.

5. In respect of petitioner in CrI.M.P.No.16978 of 2019 /A2, learned counsel for petitioner would submit that father of the petitioner was retired Chief Engineer from Tamilnadu Electricity Board and the petitioner's father in law was from the public sector undertaking and his mother in law was also employed. They supported and helped his wife in acquiring and developing properties, they had enough means and source of income. The evidence of the defence witnesses and the defence exhibits D1 to D13 have not been adverted and considered, they were brushed aside by the trial court, which is against the dictum of the Hon'ble Apex Court. Non informing about acquiring property to the competent authority would attract only Departmental action. The petitioner had satisfactorily explained the acquisition of property with proper sources.

6. Thus learned counsel appearing for the petitioners in both criminal miscellaneous petitions would contend that both the petitioners have arguable points in the appeals and are having fair chance of success. He would further submit that in trial court, the sentence imposed on these petitioners had been suspended till 7.12.2019. Thus he prayed for suspension of sentence imposed on the petitioners till the disposal of the appeals.

7. Learned Special Public Prosecutor, CBI cases, submits that the trial court, on appreciation of the evidence and materials, had rightly convicted the petitioners/accused and opposed for granting suspension of sentence. He would further submit that the trial court has already suspended the sentence imposed on them till 07.12.2019.

8. Heard learned counsel for petitioners/A1 and A2 and the learned Special Public Prosecutor, CBI Cases.

9. Considering the facts and circumstances of the case and the gravity of the offence and taking note of the fact that the petitioners are having arguable points in the appeals. It would take some time for the appeals to be taken up for final disposal. Hence these petitions are allowed and the substantive sentences of imprisonment imposed on both the petitioners in CrI.M.P.Nos.16978 and 16973 of 2019/A1 and A2 alone are suspended pending disposal of the appeals and the petitioners/A1 and A2 are ordered to be enlarged on bail on condition that they shall execute bond for a sum of Rs.10,000/- (Rupees ten thousand thousand only) each with two sureties each for like sum to the satisfaction of the learned Additional Special Court for CBI Cases, Chennai.

10.Further the petitioners/A1 and A2 are directed to appear before the trial Court on first working day of every month until further orders.

-sd/-

19/11/2019

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 IX ADDITIONAL SPECIAL JUDGE
FOR CBI CASES, CHENNAI.

2 THE SPECIAL PUBLIC PROSECUTOR
FOR CBI CASES, HIGH COURT, MADRAS.

3 INSPECTOR OF POLICE,
CENTRAL BUREAU OF INVESTIGATION,
SPE, CBI, ACB, CHENNAI.

+4 C.C. to M/S.B.SHRUTHAN Advocate on payment of necessary charges Sr.Nos.23775 & 23774

Order

in

CRL.MP.Nos.16973 and 16978 of 2019

IN CRL A.Nos.790 and 791/2019

Date :19/11/2019

WEB COPY

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format

RVR 25/11/2019