



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.R.C (MD)Nos.492 and 494 of 2019

Mageswaran ... Petitioner/Petitioner/Accused No.12
in Crl.R.C.(MD)No.492 of 2019
Suresh ... Petitioner/Petitioner/Accused No.13
in Crl.R.C.(MD)No.494 of 2019

Vs

State represented by
The Inspector of Police,
CBI/ACB/SPE,
Madurai.

(R.C.No.229/2018 A 0001) ... Respondent/Respondent/Complainant
in both Crl.R.Cs.

Prayer in Crl.R.C.(MD)No.492 of 2019: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records and set aside the order dated 12.12.2018 passed in Cr.M.P.No.2720 of 2018 on the file of the learned II Additional District and Sessions Judge (Special Judge for CBI Cases), Madurai, Madurai District.

Prayer in Crl.R.C.(MD)No.494 of 2019: Petition filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records and set aside the order dated 12.12.2018 passed in Cr.M.P.No.2719 of 2018 on the file of the learned II Additional District and Sessions Judge (Special Judge for CBI Cases), Madurai, Madurai District.

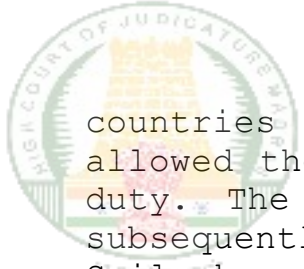
For Petitioner : Mr.A.Thiruvadi Kumar

For Respondent : Mr.N.Nagendiran
(in both Crl.R.Cs.) Special Public Prosecutor

COMMON ORDER

The petitioners herein have been named as accused in R.C.No.229/2018 A 0001 registered on the file of the respondent.

<https://hcservices.ecourts.gov.in/hcservices/> 2. The allegation against the petitioners is that they have been acting as carrier of smuggled goods from foreign



countries to India and that, the named public officials have allowed them to gain entry without payment of appropriate customs duty. The petitioners were arrested on 06.08.2018. They were subsequently enlarged on bail on 11.09.2019. The petitioners are Srilankan Citizens. As per the conditions stipulated in the order granting bail, they are presently residing at Coimbatore. The petitioners want to go back to Srilanka for a period of one month. They give an undertaking that they will return to India thereafter and only with the permission of this Court, they would leave the country. Since the petitioners' passports have already been surrendered and are in Court custody, they filed the petitions before the Court below seeking return of their passports. But then, the petitioners' request was rejected. Challenging the same, these revision cases have been filed.

3. The learned Special Public Prosecutor appearing for CBI Cases would strongly oppose the petitioner's request principally on the ground that if the petitioners are allowed to go to Srilanka, they would not return. He reminded before this Court that there are several such instances of abscondence by Srilankan Citizens. He submitted that the case on hand is a serious one, in which, the customs official have been named as accused.

4. To allay the concern of the prosecution, this Court suggested to the petitioner's counsel to come out with some workable arrangement. This Court also wanted the petitioners to offer a substantial surety.

5. When the case was taken up for hearing, the learned counsel appearing for the petitioner submitted that as far as A12-Mageswaran is concerned, his brother-in-law will stand as surety and offer a property document. The value of the property is said to be Rs.1,00,000/-. As regards A13-Suresh is concerned, one Ravi is willing to stand as surety. He will offer a title document that is worth about Rs.45,000/-. Both the petitioners shall execute special vakalat authorising Thiru.M.Jesu Paulraj (M.S.No.425/1975) to appear on their behalf. This will be a special vakalat under Section 205 of Cr.P.C. The counsel will given an undertaking before the Court below that at no point of time, he would revoke the vakalat. Likewise, the petitioners herein will also file an affidavit undertaking that the vakalat will not be revoked by them, unless they come back to India and present an application in person before the trial Court.

6. It is also seen that there is an extradition treaty between India and Srilanka. I am therefore of the view that even if the petitioners do not come back, the provisions of the said treaty can be very well invoked. The petitioners are having <https://hcservices.gov.in/hcservices/> in Srilanka. The petitioners shall furnish the complete details as regards their Srilanka residence.



7. I am of the view that in view of the aforesaid arrangement, the prosecution ought not to worry that the prosecution will be stalled, if the petitioners herein abscond. The orders impugned in this revision petitions are set aside. The learned trial Judge shall return the passports of the petitioners to them. The learned trial Judge shall also permit the petitioners herein to travel to Srilanka for a period of one month. The revision petitions are allowed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Second Additional District and Sessions Judge
(Special Judge for CBI Cases), Madurai.
2. The Inspector of Police,
CBI/ACB/SPE,
Madurai.
3. The Special Public Prosecutor for CBI cases,
Madurai Bench of Madras High Court, Madurai.

+2 CC to M/s.A. THIRUVADI KUMAR, Advocate (SR-83887,83888[F]
dated 28/08/2019)

Cr1.R.C(MD)Nos.492 and 494 of 2019
28.08.2019

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AE/ (16.10.2019) 3P 6C