

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twelfth day of March Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.3217 of 2020

IN CRL.A.NO.178 OF 2020

M.GOPALAKRISHNAN

[PETITIONER / APPELLANT /
ACCUSED]

Vs

STATE REP BY

DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI CORRUPTION,
SALEM.

CR.NO.3/AC/2004/SL

[RESPONDENT / RESPONDENT /
COMPLAINANT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.178/2020 on the file of the High Court, the High Court will be pleased to suspend the sentence till the disposal of appeal by enlarging the petitioner on bail connected in Spl.C.C.No.42/2014 on the file of the Hon'ble Special Judge (Special Court for the trial of cases under Prevention of Corruption Act), Salem, pending disposal of the above Crl.A.No.178/2020.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.178/2020 on the file of the High Court and upon hearing the arguments of M/S.P.EZHIL NILAVAN, Advocate for the petitioner and of M/S.S.KARTHIKEYAN, Additional Public Prosecutor on behalf of the Respondent the court made the following order:-

This Criminal Appeal has been filed by the petitioner/A1 against the Judgment of conviction and sentence passed by the learned Special Judge, (Special Court For Trial of Cases under the Prevention of Corruption Act), Salem, dated 30.01.2020 made in Special C.C.No.42 of 2014. The conviction and sentence imposed by the trial court are as follows:-

Petitioner /Accused	Conviction	Sentence
Petitioner/A1	Convicted for the offence under Sections 7 and 13(1)(d) r/w 13 (2) of the Prevention of Corruption Act, 1988.	To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.5000/-, in default to undergo simple imprisonment for three months for the offence under Section 7 of the Prevention of Corruption Act, 1988 and Section 13 (2) read with 13(1) (d) of the Prevention of Corruption Act, to undergo two years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo simple imprisonment for a period of six months.

Total fine imposed against the petitioner is Rs.15,000/- (Rupees Fifteen thousand only).

2.The gist of the case is as follows:-

2.1.The petitioner/A1 was working as Forest Guardm Muttal Beat, Jadayagoundan RF.,Attur Range, Salem District from 07.11.2011 to 05.03.2004. A2 was working as Forester and A3 was working as Forest Watcher. A1 and A3, being a public servants, had demanded a bribe amount of Rs.15,000/- from P.W.2/defacto-complainant. Thereafter, the demand was reduced to Rs.5,000/- and the demand was made to allow the defacto-complainant alone to use the pathway and otherwise the movement of the villagers to the pathway would be denied. The accused herein had followed up the demand and went to the house of P.W.2 on 28.02.2004. On 03.03.2004 the defacto-complainant met the accused and expresses his inability to arrange the amount. Thereafter, he was directed to pay the atleast Rs.2,000/- as advance to any of the accused, otherwise, case would be registered against him. On 05.03.2004 between 6.45 p.m to 7.00 p.m, the petitioner A1 demanded and accepted the sum of Rs.2,000/- for himself and A2 and A3 in presence of one P.W.3-the official witness. Thereafter, the money was recovered by P.W.22 and after investigation, charge sheet came to be filed. The Trial Court after examining the witness and material produced have convicted A1 and A3 and acquitted A2 in this case. Against the conviction of petitioner/A1, the present case has been filed.

2.2 The contention of the petitioner is that, in this case A2 is the Forester who has been acquitted disbelieving the evidence of the witnesses, all the accused are in the same footing, when the evidence as regards A2 had been disbelieved, the same benefit of doubt ought to have been extended to this petitioner also. It was further submitted that in this case, P.W.2 had not stated in his complaint, any doubt about by the petitioner and it was in the Court for the first time, he had made certain allegations. Further P.W.2 admitted

that he is not the author of the complaint and he never mentioned the name of second accused to the D.S.P and he is not aware how A2 name is found in the complaint. Thus, the veracity of the complaint itself is highly doubtful. Further, P.W.10 is said to have gone along with P.W.2 to lodge the complaint and he had not supported the prosecution. Further in this case P.Ws.5, 6, 7, 8, 9, 13 and 14 villagers, have not supported the case of the prosecution. P.W.2 was quarrying with reserved forest area. He was found in violation of the rules and was to be fined for the same to escape from such proceedings. He had given a false complaint against the petitioner and others. The villagers were never blocked or derived pathway hence none of the villagers have supported the falsehood of the prosecution case. In this case, P.W.2, being motivated witness, had given the complaint against the petitioner. The sentence is suspended till 26.03.2020.

3. The learned counsel for the petitioner further submitted that the petitioner has already paid the fine amount of Rs.15,000/- (Rupees Fifteen thousand only) and he was on bail during investigation and trial. Further, the petitioner has arguable points and fair chance of success in this appeal. Thus, he prayed for Suspension of Substantive Sentence of Imprisonment imposed on him till the disposal of the appeal.

4.The learned Additional Public Prosecutor (Crl.Side) submits that in this case P.W.2 and P.W.3 are the decoy and accompanying witnesses who have clearly stated about the demand, acceptance and recovery of the money from the petitioner. The petitioner and the other accused have been demanding illegal gratification from the villagers denied the right of way to their field. A2's name does not find in the complaint and P.W.2 had categorically stated that he had not mentioned about A2 as regards A1 and A3 he specifically state the part played by them. Hence, the Trial Court acquitted A2 the case of A1 and A3 are on a different footing. The petitioner was on bail during investigation and trial.

5. The learned Additional Public Prosecutor further submitted that the trial Court, on consideration of the gravity of the offence, had reached its conclusion holding that the petitioner was guilty of the aforesaid offences. Hence he opposed to grant suspension of sentence to the petitioner.

6.Considering the facts and circumstances of the case and nature of the offence and also taking note of the fact that there are arguable points involved in this appeal and it would take some time for the appeal to be taken up, this Court is inclined to suspend Substantive Sentence of Imprisonment alone till the disposal of the appeal.

7.Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner/A1 is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like sum to the satisfaction of the learned Special Judge, Special Court for Trial of cases under the Prevention of Corruption Act, Salem.

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

-sd/-
12/03/2020

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 CASES
UNDER THE PREVENTION OF CORRUPTION ACT),
SALEM.

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

3 THE DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI CORRUPTION,
SALEM.

+1 C.C. to M/S.P.EZHIL NILAVAN Advocate on payment of necessary charges SR.No.4890

सत्यमेव जयते Order

in
CRL MP.3217/2020

in
CRL.A.178/2020

Date :12/03/2020

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