

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Fourth day of March Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.2881 of 2020

IN CRL A.152/2020

VANITHA PRABHA

[PETITIONER]

Vs

STATE REP BY

[RESPONDENT]

INSPECTOR OF POLICE,
V AND AC, COIMBATORE,
CR.NO.21/2010/AC/CB.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.152/2020 on the file of the High Court, the High Court will be pleased to suspend the sentence of imprisonment imposed on the petitioner in the judgment dated 11.02.2020 made in Spl.CC No.16/2012 on the file of Special Court for Trial of cases under the Prevention of Corruption Act, Coimbatore and enlarge the petitioner on bail pending disposal of the above criminal Appeal.[CRL.MP.NO.2881/2020]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.152/2020 on the file of the High Court and upon hearing the arguments of M/S.R.SIVAKUMAR Advocate for the petitioner and of MR.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 Prevention of Corruption Act, Coimbatore, dated 11.02.2020 in Special C.C.No.16 of 2012. The conviction and sentence imposed by the trial court are as follows:-

Petitioner /Accused	Conviction	Sentence
Petitioner/A 1	Convicted for the offence under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.	To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for one month 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, 1988 to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of one month.

Total fine imposed against the petitioner is Rs.2,000/- (Rupees ten thousand only).

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

2.1.The petitioner was working as Junior Assistant and the 2nd accused was working as Assistant Rationing Officer in the office of Assistant Rationing Office, (Civil Supplies), Circle II, Coimbatore. Both are public servants. The defacto complainant/PW2 on 26.10.2010 has approached the petitioner and submitted an application for his name correction in the Family Card. After perusing the application, the petitioner has instructed the defacto complainant to meet the 2nd accused, who perused, checked and handed over the same to the petitioner. When the defacto complainant requested the petitioner for this name correction in the Family Card, she demanded a sum of Rs.700/- as illegal gratification to process the application and instructed him to bring the bribe amount on 08.11.2010.

2.2.The petitioner after receiving Rs.700/- as illegal gratification from the defacto complainant along with the application and took the defacto complainant to the 2nd accused and handed over Rs.500/- to A2 as her bribe for the official duty. After receiving the bribe amount of Rs.500/-, the 2nd accused countersigned the application and returned to the petitioner for making necessary correction in the Ration Card. The petitioner kept Rs.100/- as her

bribe share for doing the official duty and returned Rs.100/- to the defacto complainant and instructed him to bring the bribe amount of Rs.100/- on 09.11.2010 while receiving the corrected Ration Card. In the presence of accompanying official witness PW3 as a motive or reward to process the application submitted by the complainant for the name correction in the Family Card on 08.11.2010 between 16.45 hrs and 17.00 hrs at her office and thereby both the accused 1 and 2 committed offence cited above.

3.The learned counsel for the petitioner submitted that PW2 is a decoy, who is said to have approached the petitioner on 26.10.2010 and thereafter on 02.11.2010 and illegal demand was made for making correction in the Family Card, wherein PW2's name has been mentioned as Kalaipandi instead of Kalasapandi. The application itself is dated only 25.10.2010 in such a case, there is no occasion for PW2 have met the petitioner and alleged demand is said to have been made. The learned counsel further submitted that the demand is said to have been made on 26.10.2010 and thereafter, trap was laid on 08.11.2010 and there is no evidence to corroborate the alleged demand said to have been made prior to the trap. PW3, the accompanying witness, had not corroborated PW2 on material aspects and there is a doubt in recovery. The Trap Laying Officer was aware that the trap to be laid on accused officers who are ladies and no lady member was in the trap team and the police entered into the office of the respondent and a trap was arranged as per the case of the prosecution. The explanation given by the petitioner was not recorded and no reason has been given for not recording the same. The trial Court had not adverted and considered the cross examination and had merely convicted the petitioner.

4.The learned counsel for the petitioner further submitted that the petitioner has already paid the fine amount of Rs.2,000/- (Rupees two thousand only) on 11.02.2020 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.

5.The learned Additional Public Prosecutor submitted that the trial Court found the amount of Rs.700/- recovered from the petitioner during the trap which proved the guilt of the petitioner. Further, the result of the chemical re-action as Phenolphthalein test proved positive and the prosecution has successfully discharged its burden of proving that the accused accepted the amount other than the legal remuneration.

6.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 of the petitioner.

7.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.

8. 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 the Prevention of Corruption Act, Coimbatore.

9. 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/-

04/03/2020

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 THE PREVENTION OF
CORRUPTION ACT, COIMBATORE

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
V AND AC, COIMBATORE,

+1 C.C. to M/S.R.SIVAKUMAR Advocate on payment of necessary charges SR.NO. 4357

Order

in
CRL MP.2881/2020

in
CRL A.152/2020

Date :04/03/2020

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RD 05/03/2020