

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Eleventh day of March Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.3159 of 2020

IN CRL.A.No.172 OF 2020

N.SIVARAJ

[PETITIONER]

Vs

STATE REP BY
INSPECTOR OF POLICE,
DV AND AC/CHENNAI,
CR.NO.10/AC/2009/CC-II.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.172 OF 2020 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner/appellant-2 herein passed by the Learned Special Judge for Prevention of Corruption Act Cases, Chennai by Judgment dated 27.02.2020 made in CC No.21/2011 in Old CC No.17/2020 and enlarge the petitioner on bail pending disposal of the above Crl.A.No.172 of 2020.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.172 of 2020 on the file of the High Court and upon hearing the arguments of M/S.K.SHANKER, 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/Accused No.2 against the Judgment of conviction and sentence passed by the learned Special Judge for PC Act Cases, Chennai dated 27.02.2020 in C.C.No.21 of 2011 in Old C.C.No.17 of 2010. The conviction and sentence imposed by the trial court are as follows:-

Petitioner /Accused	Conviction	Sentence
Petitioner/Accused No.2	Convicted for the offence under Section 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 three months for the offence under Section 13(2) r/w 13 (1) (d) of the Prevention of Corruption Act.

Total fine imposed against the petitioner is Rs.1,000/- (Rupees one thousand only).

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

2.1.The first accused is D.Sundaram, who was employed as Joint Commissioner, Hindu Religious and Charitable Endowment, Chennai from 13.06.2008 to 26.06.2009 and the petitioner herein, who was employed as Assistant/Bench Clerk at the office of the Joint Commissioner, Hindu Religious and Charitable Endowment, Chennai from 09.07.2007 to 26.06.2009 are Public Servants is as per the definition stated under Section 2(c) of the Prevention of Corruption Act, 1988.

2.2.The defacto complainant was the Dharmagartha for the Arulmigu Aganda Thandu Mariamman Temple at Choolai since 1999. The said temple was taken over by the Hindu Religious and Charitable Endowment Department during the year 2007. The defacto complainant along with some members filed an application under Section 64 (1) of the Hindu Religious and Charitable Endowment Act 1959, to conduct an inquiry, frame a scheme for the said temple, make provision in the scheme for appointment of Non-hereditary Trustees from and among the members of the Yadhava Community at Choolai. When the adjudication proceedings of the said petition is pending for orders, the defacto complainant met A1 at his office on 24.06.2009 at about 04.30 p.m. At that time A1 demanded an amount of Rs.2,00,000/- for issuing orders in favour of them. On 25.06.2009 at about 01.15 p.m. when the defacto complainant has met A1 in the presence of A2 he reduces the amount to 1.5 Lakhs and asked the defacto complainant to bring Rs.50,000/- as first installment on 26.06.2009 at about 11.00 a.m. and further directed the defacto complainant to hand over the money to A2.

2.3.In pursuance of the said Demand by A1 on 26.06.2009 at about 11.00 a.m. the defacto complainant went to the office of the accused and inquired with A2 about A1 on his advice the defacto complainant has waited there. At about 2.30 p.m. when A1 came to his seat A2 has taken the defacto complainant and accompanied official witness to the seat of A1 and there A1 directed the defacto complainant to hand over the money to A2. As per the direction of A1, A2 took them to the office and there A2 asked the defacto complainant to hand over the money to him. When the defacto complainant has given the said amount

of Rs.50,000/- to A2 as directed by A1, A2 received the same in his Right hand and after counting the same placed the same in the table drawer. As the said person has received the money as a gratification other than the legal remuneration as a motive or reward for the issuance of order in favour of them and thereby both the accused has committed an offence punishable under Section 7 of Prevention of Corruption Act, 1988.

2.4. In the course of same transaction on 26.06.2009 at about 2.40 p.m. at the office room of the Joint Commissioner, Hindu Religious and Charitable Endowment, Chennai A1 being a Public Servant by Corrupt or illegal means and by abusing his official position obtained the said amount of Rs.50,000/- has pecuniary advantage from defacto complainant for himself through A2 and A2 has received the amount for and behalf of A1 in the circumstances stated above and thereby both the accused had committed an offence punishable under Section 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988. Hence, the petitioner has been charged and convicted cited supra.

3. The contention of the learned counsel for the petitioner is that the petitioner is A2 and the trial Court had acquitted him for the offence under Section 7 of Prevention of Corruption Act, 1988 and convicted him for the offence under Section 13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988 for misconduct. The admitted case of the prosecution is that A1 had made a demand from the defacto complainant and the petitioner herein had made no demand. The defacto complainant along with some members filed an application in O.A.No.11 of 2008 under Section 64 (1) of the Hindu Religious and Charitable Endowment Act 1959, to conduct an inquiry and frame a scheme to appoint a Non-hereditary Trustees for the temple.

4. He further submitted that PW3/defacto complainant coming to know that unfavourable report given by DW4 of Hindu Religious and Charitable Endowment Department and orders in O.A. would be passed against him. When the adjudication proceedings is pending for orders, PW3 met A1 at his office on 24.06.2009 at about 04.30 p.m. and at that point of time A1 demanded an amount of Rs.2,00,000/- for issuing orders in favour of them. In pursuance of the said demand made by A1, on 26.06.2009 at about 11.00 a.m., the defacto complainant went to the office of the Joint Commissioner, Hindu Religious and Charitable Endowment, Chennai and enquired with A2 about A1, on his advice the defacto complainant has waited there. At about 2.30 p.m. when A1 came to his seat, A2 has taken the defacto complainant to the seat of A1 and there A1 directed the defacto complainant to hand over the money to A2. Admittedly the recovery had made from the drawer and the petitioner is compelled to hand over the same.

5. The learned counsel for the petitioner further submitted that the petitioner has already paid the fine amount of Rs.1,000/- (Rupees one thousand only) on the date of conviction vide Receipt No.181664 and the trial Court has suspended his sentence upto 30 days. 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 alone till the disposal of the appeal.

6.The learned Additional Public Prosecutor appearing for the respondent 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. He would further submit that the sentence imposed on the petitioner has been suspended by the trial court upto 30 days.

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 alone is suspended till the disposal of the appeal and the petitioner 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 for Prevention of Corruption Act Cases, Chennai.

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/-

11/03/2020

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 FOR
PREVENTION OF CORRUPTION ACT CASES, CHENNAI

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

3 INSPECTOR OF POLICE,
DV AND AC/CHENNAI.

C.C. to M/S.K.SHANKER Advocate on payment of necessary charges
SR.4815

Order

in
CRL MP.3159/2020

IN CRL.A.No.172 OF 2020

Date :11/03/2020

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RVR 16/03/2020