IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Tenth day of March Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.3101 of 2020

IN CRL A.168/2020

S.M.ANBUMANI [APPELLANT / SOLE ACCUSED]

Vs

STATE REP BY [RESPONDENT]
THE DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI-CORRUPTION,
ERODE V & AC
(CRIME NO. 17/AC/2008/ER

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.168/2020 on the file of the High Court, the High Court will be pleased to suspend the sentence of imprisonment imposed in the judgment dated 28.02.2020 made in SPL.C.C.No.28.02.2020 on the file of the Chief Judicial Magistrate/ Special Judge, Erode and enlarge the petitioner on bail pending disposal of the above CRL A.168/2020 [IN CRL.MP.NO.3101 OF 2020]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.168/2020 on the file of the High Court and upon hearing the arguments of M/S.M.GURUPRASAD, 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 against the Judgment of conviction and sentence passed by the learned Chief Judicial Magistrate/Special Judge, Erode dated 28.02.2020 in Special C.C.No.12 of 2015. The conviction and sentence imposed by the trial court are as follows:-

Petitioner /Accused	Conviction	Sentence
Petitioner	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.5,000/-, 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.5,000/-, in default to undergo simple imprisonment for a period of one month.

Total fine imposed against the petitioner is Rs.10,000/- (Rupees ten thousand only).

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

PW10/defacto complainant, was the employee of Hindustan Photo Films Limited, Ooty and on his retirement, returned to his native place at Erode District. Thereby he was in need of Migration Certificate for his four children to register their names in Erode Employment Office by transfer from Ooty Employment Exchange. Hence, he had applied four individual petitions of their children before the Village Administrative Officer, 56 Arachalur "A" Village on 17.10.2008, which were received by the said office by assigning petitions numbers from 445/2008 to 448/2008 and on certified the details are correct and for further processing, they were returned to the petitioner with the instruction to file it before the Revenue Inspector of Arachalur Firka, wherein the petitioner was the Revenue Inspector and thereby the defacto complainant had filed the petitions in that office, on 18.10.2008, in the presence of the petitioner. After due enquiry, the petitioner had instructed the defacto complainant to produce a certificate from Village Administrative Officer, Arachalur. Accordingly, the complainant produced the VAO certificate on 31.10.2008 at about 16.00 hours to the petitioner. At that time the petitioner made the demand with PW10 for a sum of Rs.500/- as illegal gratification. The said demand was reiterated by the petitioner on 03.11.2008 at about 11.00 hours with the complainant, while he me him at his office and also on 05.11.2008 at about 11.30 hours. Later the said applications were returned for obtaining the signatures from his children along with reiteration of demand for the bribe amount of Rs.500/-. On 06.11.2008, at about 11.00 hours when the complainant represented the same after compliance, the petitioner had again demanded the bribe amount of Rs.500/- and on the request of complainant, it was reduced to Rs.300/-. In the course of the same transaction and in furtherance of the above said demand on 06.11.2008 between 17.00 hours to 17.25 hours, the petitioner had obtained Rs.300/- from the complainant in the presence of the accompanied official witness Mohamed Hanifa, as the illegal gratification. Hence, the accused has been charged and convicted cited supra.

3.The learned counsel for the petitioner submitted that the defacto complainant/PW10 in his chief examination stated that the petitioner had not demanded any money. The case of the prosecution according to PW10 is that the complaint itself was written by the police and not by him. On the date of the alleged demand i.e., on 31.10.2008, the petitioner was not in station and he was in other duty. He further submitted that PW2 and PW3, who are the staffs of the Revenue Department have stated nothing about any demand, except stating that the petitioner had gone out with PW10 and had come back, which is contra to the evidence of PW2/the accompanying witness, who had given different version as regards the trap.

4.The learned counsel for the petitioner further submitted that the petitioner has already paid the fine amount of Rs.10,000/- (Rupees ten thousand only) on 28.02.2020 and he was on bail during investigation and trial. Further, the petitioner has arguable points and fair chance of success in this appeal. The trial Court was pleased to suspend the sentence of imprisonment till 27.03.2020. 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 appearing for the respondent submitted that in this case PW2 is an official witness, who had categorically stated the demand and acceptance of illegal gratification by the petitioner to do his official duty and recovery of the tainted money from his possession. Further one of the witness, who is from the Revenue Department had stated that the target fixed for the petitioner to collect the money for flag day has been completed and there is no necessity for the petitioner to collect the money for flag day and the account of flag day collection have been verified and accounted and there is no due on the side of the petitioner. The petitioner in order to escape from the receipt of the bribe amount has given the specific stand, which has been rightly rejected by the trial Court. He further submitted that even though PW10 had given the evidence in hostile nature, no way it affects the case in the availability of the evidence of PW2, which is corroborated by the other witnesses and documents.

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. He would further submit that the sentence imposed on the petitioner has been suspended by the trial court till 27.03.2020.

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 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 Chief Judicial Magistrate/Special Judge, Erode.

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/-
10/03/2020

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 CHIEF JUDICIAL MAGISTRATE/
SPECIAL JUDGE, ERODE.

2 THE CHIEF JUDICIAL MAGISTRATE
ERODE [FOR INFORMATION]

3 THE SPECIAL PUBLIC PROSECUTOR (V & AC),
HIGH COURT, MADRAS.

4 THE DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI CORRUPTION,
ERODE V AND AC

+1C.C. to M.GURUPRASAD Advocate on payment of necessary charges SR NO.4866

Order

in
CRL MP.3101/2020

in
CRL A.168/2020

Date :10/03/2020

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MK:12/03/2020