

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Sixteenth day of March Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.3381 of 2020

IN CRL.A.NO.189 OF 2020

VENKATASUBRAMANIAN

[PETITIONER]

vs

DEPUTY SUPERINTENDENT OF POLICE
VIGILANCE AND ANTI-CORRUPTION,
DHARMAPURI.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.189/2020 on the file of the High Court, the High Court will be pleased to suspend the sentence dated 27.02.2020 imposed on the petitioner in Spl.C.C.No.04 of 2012 on the file of Special Judge/Chief Judicial Magistrate, Dharmapuri and enlarge the petitioner on bail pending disposal of the above criminal appeal.[CRL.MP.NO.3381/2020]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal Case No.189/2020 on the file of the High Court and upon hearing the arguments of M/S.M.V.VENKATASESHAN Advocate for the petitioner and of MR.S.KARTHIKEYAN ADDL. PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

This Criminal Appeal has been filed by the petitioner/Accused against the Judgment of conviction and sentence passed by the learned Special Judge, Chief Judicial Magistrate, Dharmapuri, dated 27.02.2020 in Special C.C.No.04 of 2012. The conviction and sentence imposed by the trial court are as follows:-

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Petitioner /Accused	Conviction	Sentence
Petitioner/ Accused	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 six months and to pay a fine of Rs.500/-, 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 (1) (d) read with 13 (2) 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 three months.

Total fine imposed against the petitioner is Rs.1,500/- (Rupees One thousand and five hundred only).

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

2.1. The petitioner was working as Assistant in the office of the R.D.O, Dharmapuri. On 02.03.2009 at about 5.45 p.m at the office of the Revenue Divisional Office, Dharmapuri the accused, being a public servant by abusing his position, in pursuant to the earlier demand made on 28.12.2008 and on 06.01.2009 by corrupt or illegal means demanded and accepted Rs.500/- from the defacto complainant Ravichandran in the presence of accompanying official witness Devarajan, which is illegal gratification other than legal remuneration as a motive or reward for arranging to get order from the Revenue Divisional Office, Dharmapuri for including 0.05 cents of land, which was mistakenly omitted in the computer patta of the complainant.

2.2 The contention of the petitioner is that admittedly, the petitioner was on leave from 27.01.2009 to 01.03.2009 which is admitted by P.W.18, T.L.O. In such circumstances, the question of demand by the petitioner does not arise. P.W.18 had motive and engaged P.W.2 to lodge a false complaint against the petitioner. The relatives of P.W.18 had been insisting the petitioner to process the file in awarding compensation for his relatives for the land acquired by the Government. The delay caused in awarding the compensation it

was assumed that the petitioner was the reason. Further, the sanction for prosecution has to be granted by the Collector and not the D.R.O who is not the appointing Authority. In view of the same, the sanction order is not proper. The sentence is suspended till 28.03.2020.

3. The learned counsel for the petitioner further submitted that the petitioner has already paid the fine amount of Rs.1,500/- (Rupees One thousand and five hundred 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) submitted that in this case in issuance of computer patta, inadvertently some land portion was omitted since the land of the petitioner had been deleted for which, P.W.2 had made several representations for correction. Initially there was a demand of Rs.1000/-, later it was reduced to Rs.500/- to process the file and thereafter, the petitioner was directed to to make initial amount of Rs.500/- and thereafter, on completion of the work, the balance Rs.500/- to be paid. The trial Court had not adverted and considered the cross examination and had merely convicted the petitioner.

5.The learned Additional Public Prosecutor further submitted that the trial Court found the amount of Rs.500/- recovered from the petitioner during the trap which proved the guilt of the petitioner. Further, the result of the chemical re-action on 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 in holding the petitioner 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/Accused 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, Chief Judicial Magistrate Court for Trial of the Prevention of Corruption Act,

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/-

16/03/2020

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
CHIEF JUDICIAL MAGISTRATE COURT FOR TRIAL OF
THE PREVENTION OF CORRUPTION ACT,
DHARMAPURI

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI-CORRUPTION,
DHARMAPURI.

+2C.C. to M/S.M.V.VENKATASESHAN Advocate on payment of
necessary charges SR.NO. 5087

Order

in
CRL MP.3381/2020

IN CRL.A.NO.189 OF 2020

Date :16/03/2020

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