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.3436 of 2020

M.K.MANOHARAN [APPELLANT / ACCUSED]

Vs

THE STATE REP.BY [RESPONDENT / COMPLAINANT]
THE INSPECTOR OF POLICE,
VIGILANCE AND ANTI-CORRUPTION,
CITY SPECIAL UNIT-I,
CHENNAI-600 016.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.190/2020 on the file of the High Court, the High Court will be pleased to suspend the execution of sentence in Judgment dated 20.02.2020 made in C.C.NO.21 of 2012 by the learned Special Judge, Special court for exclusive trial of cases under Prevention of Corruption Act, at Chennai 600 104, pending disposal of the above Crl.A.No.190/2020.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.190/2020 on the file of the High Court and upon hearing the arguments of M/S.P.R.S.THAMIZHMARAN Advocate for M/S.T.HEMALATHA, 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 against the Judgment of conviction and sentence passed by the learned Special Court for the cases under Prevention of Corruption Act, Chennai dated 20.02.2020 in Special C.C.No.21 of 2012. The conviction and sentence imposed by the trial court are as follows:-

Petitioner /Accused	Conviction	Sentence
Petitioner/ Accused	Convicted for the offence under Sections 13(2) r/w 13 (1)(e) of the Prevention of Corruption Act, 1988.	To undergo rigorous imprisonment for a period of three years and to pay a fine of Rs.5,000/-, for the offence under Section 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988

Total fine imposed against the petitioner is Rs.5,000/- (Rupees five thousand only).

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

2.1 The petitioner who was formerly Commercial Tax Officer is said to have acquired assets during the check period from 1.1.2004 to 15.09.2009 to the tune of Rs.45,73,145.05. After completion of trial had found the petitioner and income during the check period as per statement III as Rs.24,35,755/-.As the prosecution has clearly established the fact that the accused officer has acquired disproportionate assets to the extent of Rs.45,73,145.05/- which is 187.75%. disproportionate to his known source of income and the Accused Officer could not satisfactorily explain and account for the disproportionate assets, the trial Court from the overwhelming evidence of the prosecution has come to a conclusion that the prosecution has proved the case beyond reasonable doubt and also come to a conclusion that the Accused Officer has committed criminal misconduct which is an offence under Section 13(2) read with 13(1)(e) of Prevention of Corruption Act, 1988.

2.2 The petitioner submits that the case under dispute has been registered initially as preliminary enquiry and thereafter, regular case came to be registered. The petitioner was given opportunity to give explanation for the properties. His explanation was unacceptable one. He further submitted that the petitioner's wife is a land lady and having huge income from his family property and she is an Income Tax Assesses. If the said income of his wife was taken into consideration there is no disproportionate assets at the hands of the Accused Officer. The Accused Officer has given explanation with regard to the assets to the Investigation Officer, but the Investigation Officer failed to consider the said explanation. He further submits that the search of the house of the petitioner was not conducted in the presence of the independent witnesses, the procedure for search was not followed.

2.3 The contention of the petitioner is that the petitioner's wife was an Income Tax Assesses. Further her statement was recorded during investigation which was not produced before the Court. The petitioner's wife hails from affluent family, who have considerable resources the loan income from the property in the name of the petitioner's wife was not considered. No explanation was sought from the petitioner's wife and attributed all the properties to the credit of the petitioner is not correct. Further during the search, warrant was not produced during the house search. The search was conducted between 6.00am to 9.00 am and search warrant was sent to the learned Magistrate only on 10.30 am after the search proceedings was completed. The petitioner's explanation was not considered properly.

3.The learned counsel for the petitioner further submitted that the petitioner has already paid the fine amount of Rs.5,000/- (Rupees five 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 the credible information was received against the Accused Officer that he has amazed wealth disproportionate to his known source of income and based on the said information a preliminary inquiry was conducted and in the said inquiry it was found that the said person has amazed wealth and the check period for the accused officer was fixed from 01.01.2004 to 15.09.2009. Apart from the items 1 to 14 shown in statement No.1 the accused officer has acquired 19 items which is worth Rs.68,33,833.65/- at the end of the check period. The petitioner sentence was suspended till 19.03.2020.

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 of 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. Further it is a statutory 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/Accused is ordered to be enlarged on bail, on condition that she 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 the cases under Prevention of Corruption Act], Chennai.

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/-
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
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
UNDER PREVENTION OF CORRUPTION ACT,
AT CHENNAI-600 104.

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

3 THE INSPECTOR OF POLICE,
VIGILANCE AND ANTI-CORRUPTION,
CITY SPECIAL UNIT-I,
CHENNAI-600 016.

+2 C.C. to M/S.T.HEMALATHA Advocate on payment of necessary charges SR.No.5071

Order

in
CRL MP.3436/2020

in
CRL.A.190/2020

Date :16/03/2020

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cs 20/03/2020