

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Eighteenth day of March Two Thousand Twenty
PRESENT

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.3525 of 2020

IN CRL A.197/2020

S.RAJENDRAPRASAD

[PETITIONER]

Vs

STATE REP BY
THE INSPECTOR OF POLICE,
V AND A C POLICE UNIT,
PUDUCHERRY THROUGH
SPECIAL PUBLIC PROSECUTOR
(CR.NO. 2/2012)

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.197/2020 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed by the honble Special judge, Under prevention of Corruption Act 1988 Principle Sessions at Puducherry in Special Calendar Case No. 28/2012 dated 17.02.2020 disposal of the appeal. [CRL.A.NP./197/2020]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.197/2020 on the file of the High Court and upon hearing the arguments of M/S. R.U.DINESH RAJKUMAR, 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, Puducherry, dated 17.02.2020 made in Special C.C.No.28 of 2015. The conviction and sentence imposed by the trial court are as follows:-

Petitioner /Accused	Conviction	Sentence
Petitioner/ Accused	Convicted for the offence under Section 409 and Section 13(1) (c) r/w 13(2) of the Prevention of Corruption Act, 1988 and convicted under Section 248(2) Cr.P.C.	To undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1000/-, in default to undergo rigorous imprisonment for one month for the offence under Section 13(1) (c) read with 13(2) of the Prevention of Corruption Act, to undergo one year rigorous imprisonment and to pay a fine of Rs.52,000/-, in default to undergo rigorous imprisonment for a period of one month.

Total fine imposed against the petitioner is Rs.53,000/- (Rupees Fifty three thousand only).

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

2.1. The petitioner while working as Bhandar Manager, Grade-II, in the Khadi Craft Show Room, Kamaraj Salai, Saram, Puducherry, who was deputed to participate in the National level Exhibition 2009 at Bengaluru. The exhibition was held during 04.02.2009 and 05.03.2009. The petitioner was entrusted with the duty of exhibits sale, had sold Khadi goods worth Rs.70,431/-, but remitted only a portion of sale proceeds amounting to Rs.19,075/- and thereby dishonestly or fraudulently misappropriated the balance amount of Rs.51,356/- and thereby committed criminal breach of trust punishable under Section 409 I.P.C and criminal misconduct as defined under Section 13(1)(c) of the Prevention of Corruption Act 1988, punishable under Section 13 (2) of Prevention of Corruption Act, 1988.

2.2. To substantiate the case of the prosecution, P.W.1 to P.W.16 are examined and Exhibits P1 to P34 are marked. The Trial Court had considered the evidence and materials, the petitioner had convicted as mentioned above.

2.3.The learned counsel for the petitioner submits that the petitioner was involved in the Union activities of the employees and the officers have teamed up to implicate the petitioner and foisted the case, implicated the petitioner in the above case. The petitioner had taken a demand draft bearing No.690429 dated 11.05.2010 in favour of the Chief Executive Officer, Khadi and it had been submitted which had not been deliberately encashed. The

petitioner taking the demand draft has been admitted by P.W.13. The demand draft is taken, and submitted is proved through R.T.I communication. The petitioner had given a detailed explanation while questioned under Section 313 Cr.P.C further, during cross-examination this fact was confronted with the witnesses. The Trial Court failed to consider these aspects and had convicted the petitioner.

2.4.The petitioner further submitted that in this case occurrence had taken place during February-March 2009. But a complaint came to be lodged only during March 2012. Even before the complaint was lodged the disputed amount had been paid by way of Demand Draft. No reason had been given for delayed complaint, after three years, the Trial Court glossed over for the same. It is a motivated complaint since the petitioner happens to be president of the Employees Union. He had been framed in this case.

3. The learned counsel for the petitioner further submitted that the petitioner has already paid the fine amount of Rs.53,000/- (Rupees Fifty three thousand only) and he was on bail during investigation and trial. Further, the petitioner has arguable points and has a 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 (Puducherry) submits that even according to the petitioner, the misappropriate amount of Rs.51,357/- which ought to be remitted immediately after the concluding of the exhibition i.e., during March 2009. But, the claim of the petitioner that by way of Demand Draft dated 11.05.2010 had been paid will not absolve the petitioner of his misappropriation. Further, the witnesses from the Khadi Department have categorically stated that this demand draft had not been credited and encashed. The petitioner immediately after the exhibition had not remitted the sale proceeds and failed to attend the office instead he absented himself unauthorizedly. The petitioner being officer bearer of the Employees Union had been conducting himself against the rules and regulations. Further, the Trial Court on proper analysis of the evidence and materials produced found that the petitioner guilty and convicted him. The petitioner was on bail during investigation and trial. The sentence is suspended till 16.03.3020.

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 to 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 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 alone 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, under Prevention of Corruption Act 1988, Principal Session at Puducherry.

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/-

18/03/2020

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
UNDER PREVENTION OF CORRUPTION ACT 1988
PRINCIPAL SESSIONS AT PUDUCHERRY

2 THE SPECIAL PUBLIC PROSECUTOR
PUDUCHERRY [V AND A C]

3 THE INSPECTOR OF POLICE,
V AND A C POLICE UNIT,
PUDUCHERRY THROUGH
SPECIAL PUBLIC PROSECUTOR

+1 C.C. to M/S. R.U.DINESH RAJKUMAR Advocate on payment of
necessary charges SR.NO. 5273

Order

in

CRL MP.3525/2020

in

CRL A.197/2020

Date :18/03/2020

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RD 18/03/2020

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