

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 05.06.2020
CORAM :

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.3988 of 2020
in
CRL.A.No.232 of 2020

V.Ramesh

... Petitioner/A.1

.. Vs ..

State Rep. by
Inspector of Police,
V & AC., Villupuram.
(Crime No.4 of 2011)
Complainant

... Respondent /

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) of the Code of Criminal Procedure, seeking to enlarge the petitioner on bail by suspending the sentence imposed on the petitioner on 17.03.2020 in Spl. Case No.64 of 2014 passed by the learned Special Judge for Prevention of Corruption Act Cases, Villupuram, and till disposal of the Crl.Appeal No.232 of 2020 filed by the petitioner on the file of this Court.

For Petitioner : Mr.R.C.Paul Kanagaraj

For Respondent : Mr.S.Karthikeyan
Additional Public Prosecutor

ORDER

The petitioner, who is the first accused in Spl.Case No.64 of 2014 was convicted by the learned Special Judge for Prevention of Corruption Act Cases, Villupuram, by judgment dated 17.03.2020 for the offence under Section 7 of Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for three months and he was also convicted for the offence under Section 13(2) r/w. 13(1)(d) of Prevention of Corruption Act, 1988 and sentenced to undergo rigorous imprisonment for four years and to pay a fine of Rs.5,000/- in default, to undergo simple imprisonment for six months. Against the said conviction and sentence, the petitioner has preferred the above criminal appeal along with this petition seeking suspension of sentence.

2. The gist of the case is that the petitioner/A.1 was working as Commercial Inspector in the office of Junior Engineer, (O & M), TNEB, Thumpur, Villupuram District from 30.06.2008 to 14.03.2011. A.2 was contract labour [private person during the said period]. The petitioner was performing the official work of making arrangement for EB service connection to the irrigation Well of the de facto complainant namely, Ramachandran. On 11.03.2011 at about 15.30 hours, in the office of Junior Engineer, (O & M), TNEB, Thumpur, Villupuram District, A.1 initially demanded a sum of Rs.8,000/- from the de facto complainant and later, on the request of the de facto complainant, A.1 agreed and directed the de facto complainant to pay an initial amount of Rs.4,000/- on 14.03.2011 as bribe amount. The de facto complainant is not willing to pay the demand made by the first accused and approached the respondent herein, who on verification of the complaint, enlisted the service of two independent witnesses viz., Devavenkatesan and Sivakumar; explained them about the phenolphthalein test and prepared the entrustment Mahazar and thereafter, the de facto complainant was accompanied by Devavenkatesan/P.W.2, had gone to the office of the petitioner on 14.03.2011 at about 1.15 hours. On seeing them, the petitioner had enquired about the bribe amount. When the de facto complainant took the money to hand over to the petitioner, the petitioner/A.1 directed the de facto complainant to hand over the same to D.Palani/A.2. Thereafter, the money was received by the said D.Palani. The de facto complainant came out of the office of the petitioner and gave the pre arranged signal. The trap team entered into the office of the petitioner. The de facto complainant identified A.2, the person, who received the money. Phenolphthalein test conducted proved positive. A.2 received the money on behalf of the petitioner/A.1. Thereafter, on completion of investigation and after obtaining sanction, charge sheet came to be filed.

3. Before the trial Court, 16 witnesses were examined as P.W.1 to P.W.16 and documents were marked as Exs.P.1 to P.41 and M.Os.1 to 4 were produced. On conclusion of the trial, the trial Court found the petitioner/A.1 guilty and convicted and sentenced him as stated above.

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4. The contention of the learned counsel for the petitioner is that the de facto complainant had applied for electricity connection for two separate survey numbers for irrigation purpose under self finance scheme to the Assistant Engineer, (O & M), TNEB, Thumpur, Villupuram District, on 23.08.2007. The Letter dated 11.06.2009 from Electricity Board was received by the de facto complainant. The de facto complainant submitted relevant documents such as patta, chitta and adangal on 13.06.2009. Thereafter, on 29.11.2010, the de facto complainant met the Chief Engineer on 03.02.2010 in this regard and made a complaint for the delay in getting the service connection. The de facto complainant was asked to pay a sum of Rs.24,500/- for each connection. The de

facto complainant paid Rs.24,500/- for getting one service connection on the same day i.e., on 03.02.2011 and paid the balance amount of Rs.24,500/- on 04.02.2011. At that time, the de facto complainant was informed that he would get the service connection within a month.

5. The further contention of the learned counsel for the petitioner is that the petitioner had not made any demand as bribe from the de facto complainant. The de facto complainant, on a wrong premise, had lodged a complaint on 14.03.2011, since one month after, he had paid the amount for connection i.e., on 03.02.2011 and 04.02.2011. The connections were not given. The trial Court failing to look into the fact that the petitioner as Commercial Inspector his duty is only to raise and collect the charges for the work of the department. Thereafter, the logistics of laying post, drawing wire, giving connection is with the field and technical staff. The petitioner is not a technical person. The petitioner had never demanded any amount as bribe from the de facto complainant as regards the work and there was no work pending with the petitioner. There are vital contradictions in the evidence of P.W.2, accompanying witness and P.W.3, decoy witness. P.W.3 admits in his evidence that the petitioner had not demanded any bribe amount. Further, he states that this petitioner was having his lunch at that time. On the other hand, P.W.2 gives a contradictory version. It is an admitted fact that poles were to be installed and wires to be drawn, and thereafter, service connection has to be provided for the de facto complainant which incurred some work, material and expenditure. The petitioner had not made any demand as bribe amount or for any other expenditure. The trial Court failed to consider the evidence of the witnesses in its entirety.

6. The cross-examination of the witnesses were not considered. Further, the petitioner had not made any demand and no money was recovered from the petitioner. The petitioner is in confinement from 17.03.2020 and sought for suspending the sentence imposed on him by the trial Court.

7. Learned Additional Public Prosecutor filed his counter and submitted that 16 witnesses were examined and 41 documents were marked and four material objects were produced in this case. P.W.1 is the sanctioning authority. P.W.2 is the accompanying witness. P.W.3 is the decoy witness. P.Ws.2 and 3 have categorically stated about the demand, acceptance and recovery of the trap amount. Though in this case, the trap amount was recovered from A.2, the demand was made by the petitioner. On the instruction of the petitioner only, A.2 had received the bribe amount. A.2 is a private person and he has no authority. The petitioner is a Commercial Inspector, who has to issue the proceedings with regard to service connection. As could be seen from the records, the proceedings had been delayed for want of bribe for installation of post and drawing of wire. The de facto complainant had already made payments and there is no need for the

petitioner to seek additional payment for the same. The petitioner having received the bribe amount is now giving such an explanation.

8. The trial Court, after considering the evidence of the witnesses and the material objects produced and on appreciation of the evidence, had found the petitioner guilty under Sections 7 and 13 (2) r/w. 13(1) (d) of the Prevention of Corruption Act.

9. Considering the submissions made, there are some vital contradictions in the evidence of P.W.2 and P.W.3. Admittedly, in this case, recovery of the tainted money was not from the petitioner. The petitioner is a Commercial Inspector and he is not a Technical person and his duty is only to issue proceedings for collection of necessary charges. The installation and energies in the job of Technical Staff, there was no work pending with the petitioner. It would take some time for the appeal to be taken up for final hearing. The petitioner was on bail during investigation and trial. In view of the same, this Court is inclined to suspend the sentence imposed on the petitioner.

10. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on the following conditions:-

[i] The petitioner shall execute his personal bond for a sum of Rs.10,000/- (Rupees ten thousand only) before the Superintendent of the concerned prison;

[ii] Thereafter, the petitioner shall execute two sureties for a like sum of Rs.10,000/- (Rupees ten thousand only) each, before the learned Special Judge for Prevention of Corruption Act Cases, Villupuram;

[iii] The sureties to be executed after lift down of lock down and commencement of regular Court;

[iv] The petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m., pending appeal.

-sd/-

05/06/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SPECIAL JUDGE FOR
PREVENTION OF CORRUPTION ACT CASES,
VILLUPURAM.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
V & AC, VILLUPURAM DISTRICT.

C.C. to M/S. R.C.PAUL KANAGARAJ Advocate on payment of
necessary charges

Order

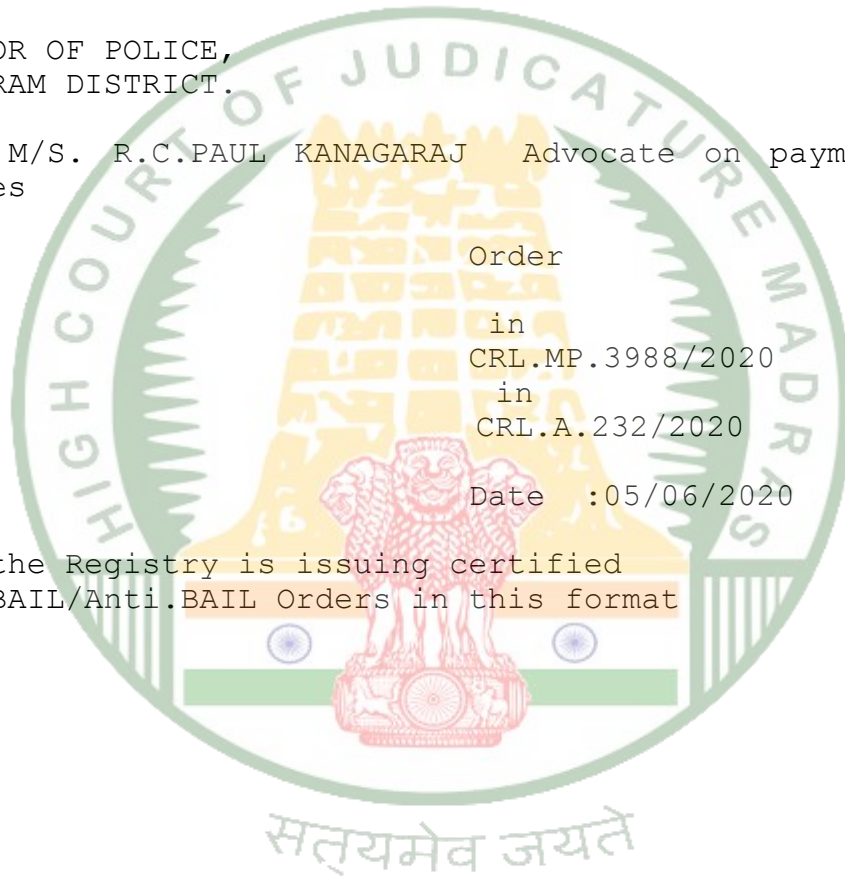
in
CRL.MP.3988/2020

in
CRL.A.232/2020

Date :05/06/2020

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MK:19/08/2020



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