IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 29.07.2020

CORAM :

THE HON'BLE MR. JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.4479 of 2020
in Crl.A.No.281 of 2020

K.Elango .. Petitioner

/versus/

State represented by
The Inspector of Police,
Vigilance and Anti-Corruption Wing,
Villupuram,Villupuram District,
Crime No.07 of 2010. .. Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389 of Criminal Procedure Code, to suspend the sentence passed by the learned Special Judge (Special Court for Trial of Cases under the Prevention of Corruption Act) Villupuram in Spl.Case No.14 of 2014 dated 29.06.2020 and enlarge the petitioner on bail pending the disposal of the above Criminal Appeal.

For Petitioner : Mr.M.Devaraj

For Respondent : Mr.K.Prabakaran
Additional Public Prosecutor

ORDER

The petitioner, who is the sole accused filed this Criminal Miscellaneous Petition to suspend the sentence passed by the learned Special Judge, Special Court for Prevention of Corruption Act Cases, Villupuram made in Special Case No.14 of 2014, dated 29.06.2020. The conviction and sentence imposed by the trial Court are as follows:-

Petitioner /Accused	***Conviction***	***Sentence***
Petitioner/ Sole Accused	Convicted for the offence under Sections 7, 13(ii) r/w 13(1)(d) of Prevention of Corruption Act, 1988.	(a) To undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.5000/-, in default to undergo simple imprisonment for a period of 6 months for the offence committed under Section 7 of Prevention of Corruption Act, 1988. (b) To undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.5000/-, in default to undergo simple imprisonment for a period of six month for the offence under Sections 13(2) read with 13(1) (d) of the Prevention of Corruption Act.

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

2. The gist of the case is that:-

(i)The accused/petitioner was working as Commercial Inspector, O/o. The Assistant Engineer, O &M, TNEB, Eicher Village, Gingee Taluk, Villupuram District from 31.12.2009 to 22.06.2010 and he is a public servant as per Section 2(c) of the Prevention of Corruption Act, 1988.

(ii)On 21.06.2010 at about 11.00 hrs, at his office, the accused demanded a sum of Rs.8,000/- as bribe from the complainant/Tr.Kandan for getting free Agricultural EB Service connection to the complainant's well. Since the complainant told that he would not be able to give the said bribe amount, the accused directed the complainant to pay a sum of Rs.3,500/- as bribe on 22.06.2010 as initial amount and the rest of bribe amount latter, after getting the free Agricultural EB Service connection , as gratification other than legal remuneration as a motive or reward for doing his official act to perform and making arrangements to get free Agricultural EB Service connection. The accused is authority to recommend and make arrangements to get free Agricultural EB Service connection to the complainant, for which he demanded illegal remuneration.

(iii)Pursuant to the aforesaid demand on 22.06.2010 between 09.45 hrs and 09.50 hrs, the accused reiterated the said demand of gratification other than legal remuneration from Tr.Kannan and obtained same from him at Eichur T.N.E.B office, Gingee Taluk. Hence the accused appears committed an offence punishable under Section 7 of Prevention of Corruption Act, 1988. Moreover, the accused being a public servant, by abusing his official position, obtained the above said sum of Rs.3,500/- as pecuniary advantage and hence the accused to have committed an offence punishable under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The Trial Court, on examination of witnesses and perusal of documents, found that the petitioner guilty and committed him as aforementioned.

3.The learned counsel for the petitioner submitted that P.W.2, had lodged a false complaint before the DVAC, Villupuram against the petitioner, stating that the petitioner had demanded a sum of Rs.8,500/-, for getting free service connection and later, reduced the demand to Rs.3,500/-. The father of P.W.2, who is the owner of the land, had advised P.W.2 in lodging a false complaint. The actual fact is that the application was submitted by the father of P.W.2/P.W.3, in the year 1987 in respect of the land in Survey No.44/3. Thereafter, when the application was taken for consideration on 11.01.2010, a communication was sent to the complainant/P.W.2 for producing the relevant documents with regard to the well. Thereafter, the petitioner herein and P.W.5/the Assistant Executive Engineer visited the field and well for giving electricity connection, the Assistant Executive Engineer conducted survey. During the survey, the Assistant Executive Engineer found that the father of P.W.2 applied for electricity connection in Survey No.44/3, instead of, the complainant's father arranged alternate land for getting electricity service connection. Since the petitioner made objection for the same, P.W.2 and P.W.3 assumed that the objections were made only for the purpose of bribe. The respondent had not conducted proper verification on the complaint and the credibility of the petitioner. According to the complaint/Ex.P2, there was a initial demand on 11.01.2010. When the petitioner and P.W.5 visited the land in Survey No.44/3, P.W.5 had not made any remarks of demand on that day by the petitioner. Further, he submits that during the trap, P.W.4 accompanying witness contradict with P.W.2. There are major contradictions in the evidences of P.W.2 and P.W.4. It is further submitted that when P.W.11 seized files pertaining to P.W.2's land, it is seen that already the work allotted to the petitioner is completed. Hence there is no question of demand. Further, P.W.2 stated that the petitioner received the bribe amount and kept it in his pant pocket. But, P.W.4 stated that the bribe amount was kept it in shirt pocket and P.w.5 reached the office by 11.00 a.m., thereafter, recovery proceedings commenced. On the contrary, the recovery mahazar shows the recovery proceedings commenced by 9.45 a.m. Hence, there is cloud of mystery with regard to the demand, acceptance and recovery. These vital contradictions have not been properly considered by the Trial Court. Hence, he sought for suspension of sentence.

4.The learned Additional Public Prosecutor submitted that P.W.2, the complainant, gave a complaint against the petitioner for demand of bribe from him. P.W.11 recorded the statement of witnesses and there is nothing to suspect the credibility and genuineness of the complaint. The petitioner being the Commercial Inspector, had been extracting money from the poor Agriculturist. The application was given in the year 1987. After a lapse of 13 years, the application was processed, which would clearly show the intention of the petitioner in receiving bribe. He further submitted that in this case, the demand receipt and recovery are confirmed by the evidences of P.W.2, P.W.4 and P.W.11. P.W.1 is the Sanctioning Authority, who had confirmed the case of the prosecution. P.W.5, 6 and 7 are the officials, who are working with the petitioner, had also supported the case of the prosecution. Hence, he opposed for suspension of sentence.

5.Considering the rival submissions and on perusal of the materials available on record, it is seen that there are some vital contradictions in the evidence of P.W.2 and PW4. The earlier demand is not mentioned by P.W.5. The petitioner had already completed the work expected by him and there is some doubt, the manner, in which, the complaint came into existence. and there are arguable points involved in this appeal. The petitioner was on bail during investigation and during the trial. Further, it would take some time for final disposal of the appeal, hence this Court is inclined to suspend the sentence and grant bail to the petitioner till the disposal of the appeal.

6.(i) 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.

(ii) the petitioner is directed to execute a bond for a sum of Rs.10,000/- before the Superintendent of Prison, in which, the petitioner has been confined on his release. After his release, the petitioner shall produce two sureties and execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each before the learned Special Judge, Special Court for Prevention of Corruption Act Cases, Villupuram, within 15 days from the date of lifting down of lock down and commencement of regular functioning of Court below.

(iii) the petitioner is directed to appear before the trial Court on the first working day of every English month at 10.30 a.m., after lifting of the lockdown.

7.With the above directions, the Criminal Miscellaneous Petition is ordered.

-sd/-
29/07/2020

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 PREVENTION OF CORRUPTION ACT CASES,
VILLUPURAM.

2 THE SUPERINTENDENT,
CENTRAL PRISON, VILLUPURAM (VEDAMPATTU).

3 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE
VIGILANCE AND ANTI-CORRUPTION,
VILLUPURAM.

C.C. to M/S. M.DEVARAJ Advocate on payment of necessary charges

Order
in
CRL.MP.4479/2020
in
CRL.A.281/2020

Date :29/07/2020

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