IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.08.2020

CORAM:

THE HON'BLE MR. JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.4852 of 2020

in Crl.A.No.307 of 2020

A.Pichaimuthu .. Petitioner

Versus

State represented by, .. Respondent
The Inspector of Police,
Vigilance and Anti-Corruption Wing,
Villupuram,Villupuram District,
Crime No.5 of 2016.

Prayer: Criminal Miscellaneous Petition filed under Section 389 of Criminal Procedure Code, to suspend the sentence of 4 years Rigorous Imprisonment imposed on the above petitioner/appellant by the learned Special Judge, Special Court for Prevention of Corruption Act Cases at Villupuram, made in Special Case No.3 of 2018 dated 30.06.2020 and enlarge him on bail pending disposal of the above appeal on the file of this Court and thus render justice.

For Petitioner : Mr.C.P.R.Kamaraj

For Respondent : Mr.C.Iyyappa Raj
Additional Public Prosecutor

ORDER

The petitioner has filed the petition to suspend the sentence of imprisonment imposed by the learned Special Judge, Special Court for Prevention of Corruption Act Cases, Villupuram made in Special Case No.3 of 2018, dated 30.06.2020. The conviction and sentence imposed by the trial Court are as follows:-

Petitioner /Accused	Conviction	Sentence
Petitioner	Convicted for offence under Sections 7, 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.	To undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for a period of 6 months for offence under Section 7 the of Prevention of Corruption Act, 1988. To undergo rigorous imprisonment for a period of four years and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for a period of six month for offence under Sections 13(2) read with 13(1) (d) of the Prevention of Corruption Act, 1988.

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

2.The case of the prosecution in a nutshell is as follows:-

(i)PW3, the defacto complainant possessed with house plot at Nedumanur Village. To obtain patta name transfer upon the said plot, on 02.03.2016, she submitted an application before the Sankarapuram Taluk Office. But the application was rejected. Thereafter on 22.08.2016 again, she submitted another application to the petitioner, who was working as Formerly Firkka Surveyor, Allathur Firkka, Sankarampuram Taluk, Villupuram District. On receipt of the same, the petitioner demanded a sum of Rs.7,000/- as illegal gratification from PW3 for transfer of patta in her name. Initially, he received Rs.3,000/- as an advance for making arrangements. Thereafter, on 21.09.2016, PW3 met the petitioner and expressed her difficulty to pay the balance of Rs.4,000/-. Therefore, the petitioner had reduced the amount from Rs.4,000/- to Rs.3,000/-. Annoyed over the same, PW3 lodged a complaint [Ex.P7] to the Vigilance and Anti Corruption to PW12 about the demand of illegal gratification by the petitioner.

(ii)PW12 on receipt of the same, conducted discrete enquriy about PW3 and credentials of the petitioner. Thereafter, PW12 registered an FIR in Crime No.5 of 2016 [Ex.P23]. PW12 made requisition to the office of the Chief Educational Officer, Villupuram and Deputy Commissioner, Commercial Tax Office, Villupuram to depute any of their staff for trap proceedings. The accompanying witnesses came to the Vigilance office, where PW13 introduced the witnesses to PW3 and explained the nature of the complaint [Ex.P7] and conducted pre-trap proceedings. Thereafter, PW3, PW13, accompanying witnesses and other trap team members had gone to the office of the petitioner. But the petitioner was not present in the office. PW3 called the petitioner over the phone and the petitioner informed that he was in Pachery Village for the purpose of surveying land and asked PW3 to come to the said Village to pay the bribe amount. Thereafter, the trap team had gone to the said Village and stopped the vehicle near Dharma Hotel, Thumbai Main Road. PW13 asked PW3 and PW4 to meet the petitioner. PW3 after some time made pre-arranged signal, on seeing the same, PW13 along with trap team went near the petitioner and questioned what has happened. PW3 stated about the demand of the accused and PW4 narrated the same.

(iii)PW13 conducted phenolphthalein test on the hands of the accused A2/PW2 which turned positive. PW13 recovered the tainted money and compared with entrustment mahazar [Ex.P6] and prepared recovery mahazar [Ex.P10], rough sketch [Ex.25] and Observation Mahazar. Thereafter, PW14/Investigation Officer conducted further investigation, examined the witnesses, recorded their statements and filed the charge sheet before the concerned Court.

3.The learned counsel for the petitioner submitted that the petitioner neither demand any money nor received the bribe amount. In this case, evidence of P.W.7 confirmed that the money was received by A2, subsequently, A2 turned approver and the prosecution examined him as P.W.2. In the absence of any demand, recovery alone would not prove the case of prosecution. Further, P.W.3/decoy witness in this case had earlier filed an application seeking for transfer of patta in two survey numbers. The particulars found in the application and the documents were contra to each other and hence, the application was rejected. This fact has been suppressed by P.W.3/defacto complainant. PW3 was enimically deposed against the petitioner, since her earlier application was rejected. Therefore, a false complaint was given by PW3. Further, it is seen that PW3 admitted that she was directed to hand over the tainted money to one Mangai in Sankarapuram Taluk Office. But, PW3 insisted that the money will be given only to the petitioner. The said Mangai was not examined in this case. PW3 came where petitioner having lunch with others. None of the witnesses, present there stated that the petitioner made any demand. P.W.3 gave a false complaint and the respondent police had failed to verify the same. The Lower Court heavily placed reliance on the evidence of approver/PW2, which is highly doubtful. The Hon'ble Apex Court had held that evidence of approver is doubtful, unless his statement is corroborated with material particulars. In this case, approver evidence is not corroborated by the other materials. Further in this case, there was no necessity to take A2 has approver. The accompanying witnesses P.W.4 and P.W.3 are contradictory to each other. P.W.8 and P.W.9 admitted that e-application of P.W.3 was rejected. But the application form was not produced by PW3. P.W.12/Deputy Superintendent of Police admitted that he had made discrete enquiry and also used voice recorder to confirm the demand. In this case, voice recorder and recordings not produced. The petitioner was on bail, during investigation and trial.

4.The learned Additional Public Prosecutor submitted that in this case, there are totally 14 witnesses and 29 exhibits have been marked and M.O.1 to M.O.5 have been marked. P.W.1 is the Sanctioning witnesses. P.W.2 approver, who received the bribe amount on behalf of the petitioner. P.W.3 is the decoy. P.W.4 is the accompanying witness and P.W.7 is the VAO of Pachery Village, who was having lunch along with petitioner and in his presence, the bribe amount was handed over. From the evidence of P.W.2 to P.W.4, P.W.7 and P.W.13, demand, acceptance and recovery of bribe amount had been proved. P.W.8 and P.W.9 have stated about the rejection of earlier application. P.W.10 and P.W.11 are the officials from Airtel and Aircel Compaines who have stated about the call details and the communication between the petitioner and PW3. P.W.12 is the Deputy Superintendent of Police, who conducted discrete enquiry about P.W.3 as well as credentials of the petitioner. Thus, the prosecution, by examining witnesses and producing documents, had proved the case. The trial Court, on considering the evidence and materials, had rightly convicted the petitioner.

5.Considering the rival submissions and on perusal of the material, it is seen that the trap money was recovered from P.W.2, but later he turned approver and examined as P.W.2. P.W.7 was having lunch along with the petitioner, at the time of trap. He clearly stated that the petitioner neither demanded any money nor received any amount. The rejection of the earlier application had not stated by P.W.3 in her complaint or when she was examined. There seems to be some motivation of P.W.3 against the petitioner for rejecting the earlier application. Thus, this Court finds there are arguable points in the appeal. The petitioner was on bail, during investigation and trial, and it would take some time to be taken up for final disposal, the appeal is a statutory appeal, hence this Court is inclined to suspend the sentence and grant bail to the petitioner till the disposal of the appeal.

6.It is submitted that the petitioner while he was Sub Jail, Villupuram, suffered a stoke and his movements are paralyzed. Hence, he was referred to the Central Prison, Puzhal from there, he was sent to Government Rajiv Gandhi Hospital, Chennai where he is presently under convalesce.

7.(i) Accordingly, the substantive sentence of imprisonment imposed on the petitioner alone is suspended till the disposal of the appeal and the petitioner is ordered to be enlarged on bail.

(ii) The petitioner is directed to execute personal bond for Rs.10,000/- before the Superintendent of Prison, in which, he is confined now. After the release from prison, the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each along with two sureties for like sum 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.

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

-sd/-
19/08/2020

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 PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
VIGILANCE AND ANTI-CORRUPTION WING,
VILLUPURAM DISTRICT.

4 THE OFFICER INCHARGE,
SUB-JAIL, VILLUPURAM.

5 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL.

6 THE GOVERNMENT RAJIV GANDHI HOSPITAL,
CHENNAI

+1 C.C. to M/S.C.P.R.KAMARAJ Advocate on payment of necessary charges SR.NO. 5985

Order

in
CRL MP.4852/2020

in
CRL A.307/2020

Date :19/08/2020

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MN-21/08/2020