IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 17.08.2020

CORAM:

THE HON'BLE Mr. JUSTICE M.NIRMAL KUMAR

CRL.MP.No.4805 of 2020
in
CRL.A.No.64 of 2020

S.Namasivayam .. Petitioner

Versus

State through:
The Inspector of Police,
Vigilance & Anti Corruption Unit,
Coimbatore.
(Crime No.8/2009/AC/CB) .. Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389 (1) of Criminal Procedure Code, praying to pass an order suspending the sentence imposed on him in Spl.C.C.No.36 of 2011, dated 31.12.2019 passed by the learned Special Judge, Special Court for Trial of Prevention of Corruption Act Case, Coimbatore and enlarge him on bail till the pending disposal of Crl.A.No.64 of 2020.

For Petitioners : Mr.T.Naveen Chandar

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

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ORDER

The petitioner, accused/A1 filed this Criminal Miscellaneous Petition to suspend the sentence passed by the learned Special Judge, Special Court for Trial of Prevention of Corruption Act Case, Coimbatore, made in Spl.C.C.No.36 of 2011, dated 31.12.2019. The Trial Court convicted the petitioner/accused for the offence under Section 7 of the Prevention of Corruption Act, 1988, to undergo two years rigorous imprisonment with fine of Rs.5,000/- in default, to undergo three months simple imprisonment, further for offence under Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, to undergo two years rigorous imprisonment with fine of Rs.5,000/- in default to undergo three months simple imprisonment. The Trial Court directed the sentences to run concurrently

2. The case of the prosecution is that the petitioner/A1 was working as Zonal Deputy Tahsildar, Kinathukkadavu Circle, Pollachi Taluk, Coimbatore District and A2/G.Jayakumar was working as Village Administrative Officer, Vadaputhur Village, Pollachi Taluk, Coimbatoe District. The defacto complainant viz., R.Asokan was residing at Sundarapuram, Coimbatore, along with his mother and brother. His brother viz., T.Bosan purchased 1.25 acres of Agricultural land purchased in his name in Vadaputhur Village, Pollachi Taluk, through a registered document No.716 of 2006 on 12.02.2009. Thereafter, the said Bosan submitted a petition in Pollachi Taluk Office for transfer of patta in his name. This petition was forwarded to the Revenue Inspector of Kinathukkadavu Firka and VAO of Vadaputhur Village for their report and in turn they have submitted their respective reports recommending for inclusion of the name of Bosan and for the transfer of patta No.369 in his name on 18.03.2009. When defacto complainant and his brother met the 2nd accused in this regard, he informed that Zonal Deputy Tahsildar, Kinathukkadavu Circle returned the petition of Bosan for some clarification and he further told them to meet the 1st accused in person to fulfill his requirement for getting patta transfer order. Again on 27.04.2009 at about 10.30 a.m., when the complainant met A2 at his office in Vadaputhur, he furnished cell phone number 9750833286 and instructed the complainant to contact him on 28.04.2009 to know the requirement of A1 and to fulfill his requirement for getting patta transfer order in the name of his brother.

3. On 28.04.2009, the defacto complainant met A1 in the presence of A2 and requested for name transfer in patta. A1 demanded a sum of Rs.2,000/- as illegal gratification for issuing patta transfer order in the name of Bosan and A2 also insisted the complainant to pay Rs.2,000/- being illegal gratification to A1. When complainant informed A1 that he had no money with him, A1 informed the complainant to bring the bribe amount of Rs.2,000/- along with A2 on 29.04.2009 at Taluk Office. Since A1 was engaged in election work, he instructed the complainant to pay the bribe amount on 30.04.2009. On 30.04.2009, A1 demanded, accepted a sum of Rs.2,000/- from the defacto complainant, in the presence of accompanying official witness viz., N.Krishnan, with active assistance and aid of A2, illegal gratification. The accused/A1 committed an offence of Criminal misconduct punishable under Sections 13(2) r/w 13(1) (d) of the Prevention of Corruption Act 1988 and 109 of IPC.

4.To substantiate the case, the prosecution examined PWs.1 to 17 and marked as Exs.P1 to P28 documents and MO.1 to 7 were marked. On the side of the accused, DW.1 to DW.3 were examined and Exs.D1 to D8 were marked. The Trial Court, on completion of investigation, had convicted the accused as stated above, which was confirmed by lower Appellate Court.

5.Initially, the trial Court suspended the sentence for a period of one month by order dated 31.12.2019. Therefore, the petitioners had filed a suspension of sentence petition before this Court in Crl.M.P.No.1262 of 2020 in Crl.A.No.64 of 2020 and the same was dismissed on 07.07.2020. Following the dismissal, the petitioner preferred a Special Leave Petition before Apex Court in SLP.No.3160 of 2020 and the same was dismissed on 23.07.2020. On dismissal SLP, the petitioner voluntarily surrendered before the learned Chief Judicial Magistrate, Coimbatore on 24.07.2020. Thereafter, the petitioner is confined in the Central Prison, Coimbatore.

6.The contention of the petitioner is that on 20.05.2009, a letter was sent by the Tahsildar, Pollachi, and it was delivered to Bosan on 23.05.2009, which was marked as Ex.D1 and the xerox copy of the statement of Bosan on 26.05.2009 before the Zonal Deputy Tahsildar, Pollachi, was marked as Ex.D2 After receiving Ex.P3 on 29.04.2009, Ex.P22-FIR was registered the same date and time without verifying the genuineness of the complaint and credential of the petitioner. PW.15, the trap laying officer arranged for trap, PW.4 and PW.6, the official witnesses were asked to be the witnesses for the trap proceedings.

7.On 29.04.2009, the trap team started from the Office of Vigilance and Anti Corruption, Coimbatore, Pollachi Taluk, on that day, the trap could not be completed. In this regard, the evidence of PWs.3,4,6 and 15 are contradictory to each other.

8.On 30.04.2009, the trap team again started from the office of Vigilance and Anti Corruption, Coimbatore, consisting of PW.3, PW.4, PW.6 and PW.15 and the police party at 08.20 a.m., they reached Pollachi at about 09.30 a.m., they stopped the vehicle nearer to Pollachi Judicial Magistrate Court and asked PW.3 to contact the VAO in his mobile phone, PW.3 contacted Village Assistant - PW.12 attended the same and gave it to A2. A2 asked PW.3 to come to Pollachi Taluk Office and PW.3 and PW.4 went to Vadapadhur VAO Office and PW.6, PW.15 and his team was keeping a watch from Sub Treasury Office, Pollachi but A2 did not turn up and PW.3 contacted him over his mobile phone and A2 informed that he will come in few minutes. A2 along with PW.3 and PW.4, came to the office of A1 and when PW.3 entered the office of A1, A1 asked PW.3 as to whether he had brought Rs.2,000/- with him or not. PW.3 informed he is having the said amount with him. A2 asked PW.3 to hand over the same to A1, who received the said money, counted the same with both hands and kept the money on his right side pant pocket. Thereafter, A1 said to PW.3, the patta transfer application of his brother was placed before him and he will take immediate action for patta transfer.

9.It is seen from Ex.P28, remand requisition and Ex.P25 alteration report, it is mentioned that bribe amount was kept in the left side pant pocket of A1. Thus, there is a vital contradiction. The lower Court gave an explanation it would have be a typographical error without any materials.

10.Further, the lower Court failed to see the witnesses from the Revenue Department that the power of granting patta involves various procedure file to be procured by various persons, the demand of bribe is misconceived one, which clearly shows that the transfer of patta delay occurred, A1 is not the solely responsible. Further A1 is not the only person involved in passing patta transfer order.

11.The lower Court failed to consider the contradictions between the evidence of PWs.3,5,6 and 15 and the evidence of PW.5. The trial Court had failed to note that there was clear motive by PW3 and PW5 to implicate the petitioner in this case, the prosecution has not proved the demand for bribe. The petitioner was on bail during investigation and during trial. Initially the trial Court had suspended the sentence of the petitioner after conviction.

12.The learned Additional Public Prosecutor submitted that the suspension of sentence period given by the trial Court got expired and thereafter the petitioner absconded himself. The respondent police took steps to secure the petitioner. On 24.07.2019, the petitioner surrendered before the Chief Judicial Magistrate, Coimbatore. Since his earlier suspension of sentence petition dismissed, he challenged the same before the Hon'ble Apex Court by way of SLP which was also dismissed on 23.07.2019. The petitioner's contention that he has got severe health ailments is without any materials. The Trial Court on considering the evidence and materials, rightly convicted the accused. He further submitted that A2 in this case was granted bail.

13.This Court considers the rival submissions and perused the materials available on record.

14.Considering the submissions, it is seen that PW.3, the defacto complainant is the brother of PW.5, who purchased the property and wanted patta to be transferred in his name. The transfer of patta application was forwarded to the VAO and Revenue Inspector for conducting enquiry, after their report. Some discrepancies was found in the report, to ascertain the same, further report was requested. PW.5 in furtherance to the summons, appeared before the Zonal Deputy Tahsildar gave statement and also appeared before the VAO and Revenue Inspector and these vital facts are suppressed by PW.5 and as well as PW.3, PW.3 had not informed the respondent police about these developments, projected as though there was demand of bribe for transfer of patta. Further, there are contradictions between the evidence of PWs.3,4,6 and 15, PW.5 is a doubtful witness. The Trial Curt had not considered the defence witness and the materials produced in the defence. The appeal is a statutory appeal. It appears it would take some time in listing the appeal for final hearing. Further, the co-accused in this case has been granted bail. In view of the same, this Court is inclined to suspend the sentence and grant bail to the petitioner.

15.(i) Accordingly, the substantive sentence of imprisonment imposed on the petitioner alone is suspended till the disposal of the appeal and the petitioner/accused are 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, the petitioner is confined now. After his release, the petitioner shall execute a separate bond for a sum of Rs.10,000/- (Rupees ten thousand only) along with two sureties for like sum before the learned Chief Judicial Magistrate, Coimbatore, 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.

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

-sd/-
17/08/2020

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 CHIEF JUDICIAL MAGISTRATE
COIMBATORE.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
VIGILANCE AND ANTI-CORRUPTION,
COIMBATORE.

+1C.C. to M/S. T.NAVEEN CHANDAR Advocate on payment of necessary charges SR NO.5948

Order

in
CRL MP.4805/2020

in
CRL A.64/2020

Date :17/08/2020

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MK:20/08/2020