IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.08.2020

CORAM:

THE HON'BLE Mr. JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.4687 of 2020
in Crl.A.No.300 of 2020

Dhatchinamoorthi .. Petitioner

Versus

State rep. by,
Inspector of Police,
Vigilance and Anti-Corruption Wing,
Salem.
Crime No.1/AC/NKL/08. .. Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of Criminal Procedure Code, to suspend the sentence imposed in Special C.C.No.02 of 2010 on the file of the learned Chief Judicial Magistrate/Special Judge, Namakkal dated 04.07.2020 and to enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.A.Padmanaban

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

ORDER

The petitioner, who is the accused filed this Criminal Miscellaneous Petition to suspend the sentence passed by the learned Chief Judicial Magistrate/Special Judge, Namakkal made in Special C.C.No.02 of 2010, dated 04.07.2020. The petitioner is convicted for the offence under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and sentenced to undergo Rigorous Imprisonment for a period of 3 years and to pay a fine of Rs.1,000/-, in default to undergo Rigorous Imprisonment for a period of 2 weeks for offence under Section 7 the of Prevention of Corruption Act, 1988 and to undergo Rigorous Imprisonment for a period of 4 years and to pay a fine of Rs.1,000/-, in default to undergo Rigorous Imprisonment for 2 weeks for the offence under Section 13(1)(d) of Prevention of Corruption Act, 1988. Total fine imposed against the petitioner is Rs.2,000/- (Rupees Two thousands only). The trial Court directed the sentences to run concurrently.

2. The case of the prosecution is that the petitioner was working as Village Administrative Officer at Anangur Village, Namakkal. The de facto complainant S.Venkatachalamis an agriculturist, who is having 3 acres of agricultural land in S.N.143/8-12 of Anangur Village. The patta of the land stands in the

name of his grandfather Subbannagounder, who died on 21.07.2008 and the de facto complainant's father died about 35 years ago The de facto complainant approached the petitioner to get death certificate for his grandfather and transfer the patta of the land in his name. On 24.07.2008, he asked for the Death Certificate of his grandfather and the Death Certificate was issued on 28.07.2008. While receiving the Death Certificate, de facto complainant requested the accused to arrange for granting the Legal Heir Certificate. The application for Legal Heir Certificate was prepared and obtained the signature of the de facto complainant and then demanded a sum of Rs.2,500- as illegal gratification. The de facto complainant expressed his inability to pay such amount and the demand was reduced to Rs.2,000/-. On 24.09.2008, again the de facto complainant met the accused and enquired about the Legal Heir Certificate and at that time, the demand was made again. The de facto complainant expressed his inability to pay the bribe amount of Rs.2,000/- and the same was reduced to Rs.1500/-. On 06.10.2008, the accused again reiterated his demand by stating that unless the bribe amount is paid, he would not be getting his Legal Heir Certificate and insisted the de facto complainant to pay the bribe amount on 07.10.2008. The de facto complainant was not willing to pay the bribe amount and hence, he lodged a complaint before the respondent police. On verification of the complaint, a case was registered and trap was arranged. On 09.10.2008, the de facto complainant and the official witness/PW-3 along with trap team went to the petitioner's office and at that time, the petitioner demanded and received the bribe amount of Rs.1500/-. While receiving the bribe amount, the trap team entered into the office of the accused and conducted phenolphthalein test, which turned positive, the bribe amount was recovered. The respondent, in the lower Court, examined PW1 to PW17 and marked Exs.P1 to P30 and M.Os. 1 to 8. On the side of the accused, DWs-1 and 2 were examined and Exs.D1 to D4 were marked. On conclusion of trial, the Trial Court has convicted the accused as stated above.

3. The learned counsel for the petitioner submitted that the de facto complainant/PW-2 borrowed a sum of Rs.5000/- from the accused on 06.02.2007 and executed a promissory note/Ex.D1 in the presence of DW1. He would further submit that on 09.10.2008, PW-2 had come to the office of the petitioner, made the part payment of loan amount of Rs.1500/-, which is projected as a bribe amount. PW-2 was enemical, since the petitioner was insisting and demanding the loan amount to be paid back to him. He would submit that the petitioner, being a Village Administrative Officer, has no right to issue legal heir certificate and only the Tahsildar, who had issued the same. He would submit that the legal heir certificate was made ready on 29.09.2008. PW-4-Typist attached to Tiruchengode Taluk Office, deposed that the application for getting legal heir certificate was handed over to the Deputy Thasildar on 07.08.2009 and the application form was handed over to the accused for verification. After verification, the accused submitted the same to the Revenue Inspector. PW-5-Revenue Inspector, on verification of the report received from the petitioner, had prepared a note to the Tahsildar and Deputy Tahsildar-PW-7 had signed the legal heir certificate on 24.09.2008, which was sent for despatch on 29.09.2008. PW-7-

Tahsildar deposed that on verification, it was found that the despatching clerk/PW-8 failed to despatch the legal heir certificate of PW-2 on 29.09.2008, for which, the petitioner cannot be faulted with. It is certain that as on 29.09.2008, the legal heir certificate was ready for despatch and there is no necessity for the petitioner to make any demand. He would submit that in this case, there is no evidence to prove that the petitioner had made any demand prior to receipt of bribe amount. PW-2, who have taken loan from the petitioner in the guise of repaying the same, had foisted a false case against the petitioner. To prove his defence, the petitioner had examined DW-1 and DW2 and marked Exs.D1 to D4. PW-2 had admitted that he has signed on 08.10.2008 in the letter, which is prior to the trap. He further submitted that the trial court had failed to look into the fact that the petitioner had probablised his defence by examining DWs-1 & 2 and producing the defence exhibits. The Trial Court giving reason that the petitioner had not immediately stated about the loan during trap and while filing the bail application, not examining himself as defence witness, is not proper. The petitioner while examining under Section 313 Cr.P.C had given a detailed explanation and to corroborate the same, he had examined the defence witnesses. The petitioner is expected to prove his case by preponderance of probabilities, which he had done so in this case. Further, during investigation and trial, the petitioner was on bail.

4.The learned Additional Public Prosecutor appearing for the respondent would submit that in this case PW-1 is the Revenue Divisional Officer, PW-2 is the de facto complainant, PW-3 is the accompanying witness, PWs-4 to 9 are from the Taluk Office, PWs- 10, 12, 13, 14 are from the postal department, PW-15 is the Trap Laying Officer, PW-16 and PW-17 are the investigating officers. PW-2 had clearly stated about the demand made by the petitioner and lodged the complaint before PW-3, who is the accompanying witness, had gone along with the petitioner. PW15 trap laying officer, who all proved the fact of the petitioner making demand and receiving the bribe amount and recovered the bribe amount from the accused. Phenolphthalein test proved positive, which had been proved by PW-11.

5.The learned Additional Public Prosecutor further submitted that the Trial Court found accused guilty under Section 12 of the Prevention of Corruption Act, 1988 and convicted him under Section 248(2) of Cr.P.C and sentenced him to undergo three years RI and also to pay a fine of Rs.3,000/- in default to undergo 3 months simple imprisonment. Further, he submitted that the Trial Court analyzed the evidence and convicted the petitioners. P.W.2 is the decoy, P.W.3 is the accompanying witness and PW.15 is the Trap Lying Officer, who have clearly stated about the demand, acceptance and recovery. He would further submit that in this case, the witnesses from Taluk Office have clearly stated that the legal heir certificate was signed by the Deputy Tahsildar on 24.09.2008 and sent for despatch on 29.09.2008, but the same was not despatched and it was withheld. It was despatched only on 10.10.2008 as it is seen from the evidence of PW-10. Further, the petitioner had failed to give explanation immediately after the trap.

6.Considering the rival submissions and on the perusal of the materials, it is seen that the petitioner by not examined himself as defence witness, will not throw away the defence. The prosecution had disputed the pro-note is a got up document. The petitioner has rightly contended that he has no authority for issuing legal heir certificate. The legal heir certificate was made ready on 29.09.2008 at Taluk Office. The trial Court had not adverted to the defence witness and the defence exhibits. This Court finds that there are arguable points in the appeal and vital contradictions are found in the evidence of P.W.2 and P.W.3, further, it would take some time for the appeal to be taken up for final disposal, the appeal is a statutory appeal and hence, this Court is inclined to suspend the sentence and grant bail to the petitioner till the disposal of the appeal.

7.(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 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 Chief Judicial Magistrate/Special Judge, Namakkal, 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/-
12/08/2020

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/
SPECIAL JUDGE, NAMAKKAL

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 INSPECTOR OF POLICE,
VIGILANCE AND ANTI CORRUPTION,
SALEM,

4 THE SUPERINTENDENT,
CENTRAL PRISON,
COIMBATORE.

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

Order

in

Crl.M.P.No.4687 of 2020
in
Crl.A.No.300 of 2020

Date :12/08/2020

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format

RVR 07/09/2020