

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Twenty Ninth day of September Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.5824 of 2020

IN CRL A.383/2020

P.RAJASEKARAN

[PETITIONER]

Vs

THE STATE, REPRESENTED BY
THE INSPECTOR OF POLICE,
VIGILANCE AND ANTI CORRUPTION,
SPECIAL INVESTIGATION CELL,
ALANDUR, CHENNAI-600 016,
(CRIME NO.32/PC/2009/SIC).

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(i) To Suspend the sentence imposed in C.C.No.6 of 2012 dated 17.9.2020 passed by the Special Court for cases under Prevention of Corruption Act, Chennai-600 104 and enlarge the Petitioner on bail, pending disposal of the above Crl.Appeal No.383/2020.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S. R.SANKARASUBBU, Advocate for the petitioner, and of MR. C.IYYAPPARAJ, Additional Public Prosecutor, on behalf of the Respondent, the court made the following order:-

Petitioner was found guilty for the commission of the offence u/s.7, 13(2) r/w.13(1)(d) of Prevention of Corruption Act, 1988 and convicted for the said offence u/s. 248(2) Cr.P.C. For the offence u/s.7 of Prevention of Corruption Act, 1988, the accused was sentenced to undergo one year R.I and fine of Rs.1,000/- and in default to undergo three months S.I. For the offence u/s.13(2) r/w. 13(1)(d) of Prevention of Corruption Act, the accused was sentenced to undergo two years R.I and fine of Rs.1,000/- in default to undergo three months S.I. by the learned Special Judge for the Cases under Prevention of Corruption Act at Chennai under judgment dated 17.09.2020 in C.C.No.6 of 2012. Hence, the petitioner seeks suspension of sentence.

2. The facts of the case is that the defacto complainant/P.W.2 applied for planning approval before the Corporation in order to construct the house in his land. As the said land is in unauthorised lay out his application was forwarded to CMDA for approval. The accused, who is an officer in CMDA has made a spot inspection, at that time the accused got introduced with the defacto complainant and made demanded of Rs.5,000/- for completion of the said work. The application for approval of building construction was given by the CMDA and directed the defacto complainant to pay the necessary fees for the approval. Knowing the same that the CMDA has given approval for building construction, on 04.08.2009 the accused demanded bribe from the defacto complainant. Hence, the defacto complainant preferred a complaint to P.W.9/Tr.Immanuvel Gnanasekar. On 06.08.2009, at about 12.50 hours, the defacto complainant along with P.W.3/Official witness met the accused in his office and inquired about the plan approval. For the same, the accused asked the bribe amount and for that the accused directed them to wait in ONGC canteen. P.W.2 and P.W.3 waited in the ONGC canteen. The accused came to the canteen and again reiterated the demand and accepted the bribe amount of Rs.5,000/- at about 13.10 hours. Thereafter, P.W.2 came out from the canteen and gave the prearranged signal. Immediately, P.W.9 entered into the canteen and enquired P.W.2 and recovered the money from the accused and thereafter the case was entrusted to P.W.11/Tr.Ashokan for further investigation. On the side of the defacto complainant P.W.1 to P.W.11 was examined and Exs.P1 to P13 as well as M.O.1 to M.O.5 were marked. On the side of the accused no witness was examined and Exs.D1 to D3 were marked.

3. The contention of the petitioner is that the petitioner had never demanded any money as illegal gratification from the defacto complainant/P.W.2. The file with regard to the planning permission was submitted by the defacto complainant, the permission was granted and the same was forwarded to the Corporation two days before the date of the alleged trap. Hence, the claim of prosecution that for the completion of work with regard to approval the accused demanded money cannot be accepted. Further, with regard to the demand made on 04.08.2009 to the defacto complainant is false since the petitioner was not available in the office and he was in the field work which is clearly spoken by P.W.6 in his evidence and the petitioner marked Exs.D1/Movement Register of the vehicle and D2/xerox copy of the log book of the car to prove the same. Further, the FIR in this case had been tampered and in order to prove the same the petitioner had marked D3/xerox copy of the FIR. The foundational facts of this case are highly doubtful and the lower Court without considering these aspects convicted the petitioner. The learned counsel for the petitioner submitted that he was on bail during the investigation and trial, further the Lower Court had already suspended his sentence for a period of one month and fine amount paid. Hence, prayed for suspension of the sentence.

4. The learned Additional Public Prosecutor submitted that P.W.2 is the defacto complainant who lodged the complaint to P.W.9 on the demand made by the petitioner, who was employed in CMDA,

entrusted in the work of processing the planning permission demanded Rs.5,000/- from P.W.2 and the demand was reiterated twice. Thereafter, bribe amount was handed over to the petitioner in the presence of P.W.3/Official witness. The defacto complainant gave the prearranged signal. Therefore, P.W.9 entered into the canteen and enquired P.W.2 and recovered the money. The phenolphthalein test proved positive. In this case, the demand made by the accused was proved by cogent materials and evidence. To prove the case P.W.1 to P.W.11 was examined and Exs.P9 to P13 as well as M.O.1 to M.O.5 were marked. It is to be seen that the accused received the money and kept the money in his pant pocket and the pant was marked as M.O.5, which also tested positive. The Trial Court on considering the evidence and materials has rightly convicted the petitioner. Hence, opposed for suspension of sentence imposed on the petition.

5. Considering the facts and circumstances of the case and in view of the fact that there are several infirmities in the prosecution case and there are arguable points involved in the appeal, as contended by learned counsel for the petitioner and further, the appeal is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

6. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Special Judge for the cases under Prevention of Corruption Act at Chennai within a period of 15 days from the date of receipt of a copy of this order and on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-

29/09/2020

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 FOR THE CASES UNDER
PREVENTION OF CORRUPTION ACT AT CHENNAI

2 THE INSPECTOR OF POLICE,
VIGILANCE AND ANTI CORRUPTION,
SPECIAL INVESTIGATION CELL,
ALANDUR, CHENNAI-16.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+2 C.C. to M/S. R.SANKARASUBBU Advocate on payment of necessary
charges SR.NO.6504

Order

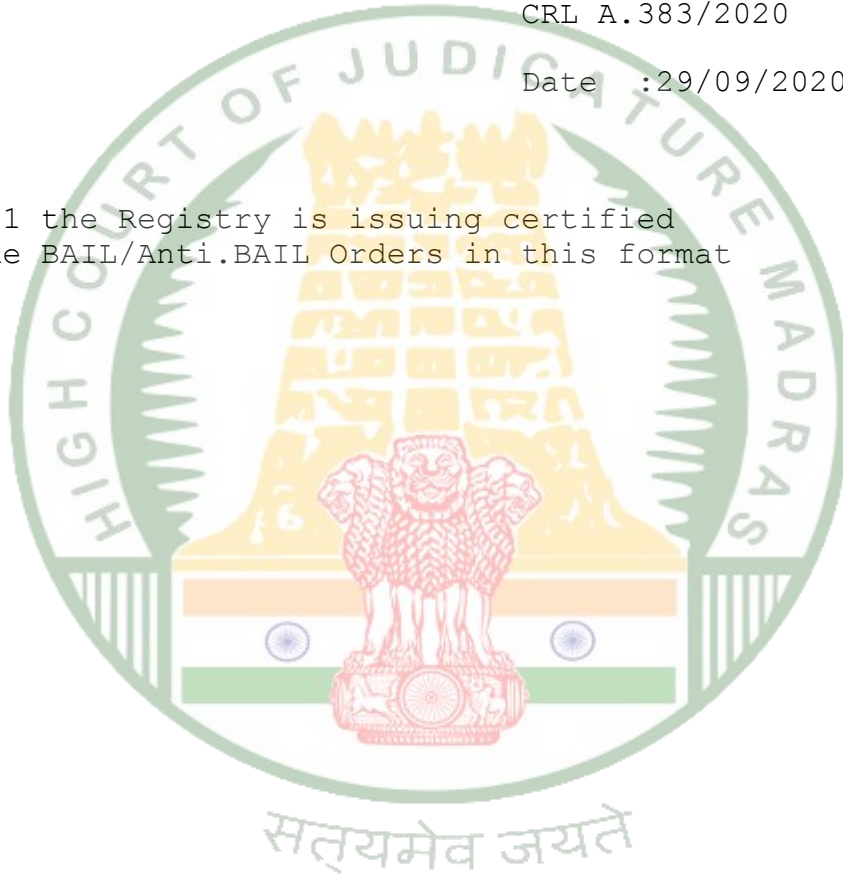
in
CRL MP.5824/2020

in
CRL A.383/2020

Date :29/09/2020

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TA-01/10/2020



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