

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.6267 of 2020
in Crl.R.C.No.889 of 2020

Pandiyar @ Veerapandiyar

... Petitioner

Versus

The State rep by,
The Inspector of Police,
Chidambaram Taluk Police Station,
Cuddalore District.
(Crime No.70 of 2005)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 of the Code of Criminal Procedure, to suspend the sentence imposed on the petitioner in conviction judgment made in Crl.A.No.122 of 2018, dated 24.09.2020 by the Principal District and Sessions Judge, Cuddalore and in C.C.No.137 of 2005 dated 19.11.2018 by the Judicial Magistrate No.II, Chidambaram and enlarge the petitioner on bail.

For Petitioner : Mr.G.Pugazhenthir

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

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the learned Principal District and Sessions Judge, Cuddalore in Crl.A.No.122 of 2018, dated 24.09.2020, confirming the judgment dated 19.11.2018 in C.C.No.137 of 2005 passed by the learned Judicial Magistrate No.II, Chidambaram.

2.The petitioner was convicted for offence under Section 406 IPC and sentenced to undergo for three years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo three months Simple Imprisonment.

3.The case of the prosecution is that on 14.08.2004, the petitioner's lorry bearing registration number TN 57 9582 illegally transported river sand from Melamoongiladi Village

River. The Tahsildar, Chidambaram seized the said vehicle. Thereafter, the petitioner approached this Court for return of vehicle by way of filing a Writ Petition. This Court by order dated 31.08.2004 in W.P.No.23752 of 2004, directed the petitioner to execute a bond and surety along with the affidavit of undertaking and ordered return of vehicle. Violating the said order and the affidavit of undertaking, on 08.02.2005, the petitioner again illegally transported river sand in the same vehicle TN 57 9582. On that day, at about 06.15 p.m., the Assistant Director, Department of Geology and Mining seized the vehicle of the petitioner and handed over to the respondent. Thereafter, a complaint [Ex.P1] was given that the petitioner in violation of undertaking given earlier on 31.08.2014, had committed the offence under Section 406 and 36-A of the Tamil Nadu Mines and Minerals Concession Rules. The respondent on the complaint [Ex.P1] of the Assistant Geologist/PW1, registered an FIR in Crime No.70 of 2005 [Ex.P5] on 22.03.2005.

4. PW1 is the Assistant Geologist, Department of Geology and Mining, PW2 is the Assistant Director of Department of Geology and Mining, who on 08.02.2005 conducted road check. At that time, he intercepted the lorry of the petitioner TN 57 9582 and found the lorry was illegally transporting the river sand, without any permit. On 10.02.2005, the petitioner along with the driver of the lorry Ranganathan admitted the illegally transportation of river sand. PW3 is the Personal Assistant to the Sub Collector and PW5 is the Assistant in the Sub Collector Office and they are stated that on 14.08.2004, a report was received from the Tahsildar, Chidambaram for transportation of river sand by the petitioner and imposition of fine of Rs.25,000/-. The petitioner, in the meanwhile, approached this Court on 19.08.2004 and obtained order for return of vehicle in W.P.No.23752 of 2004. The order was marked as Ex.P2. As per the order of this Court, the petitioner executed affidavit of undertaking [Ex.P3] that he will not indulge in any similar kind of offence. PW4 is the Notary Public, before whom, the petitioner had affirmed the affidavit. PW6/Head Constable attesting witness for the seizure of lorry and the sand. PW7/the Photographer was taken photographs of the lorry and sand and the same were marked as MO2. PW8 is the Sub Inspector of Police, who received the complaint from PW1 and registered an FIR [Ex.P5]. PW9 is the Investigating Officer, who took up the investigation examined the witnesses, including PW11, Sub Collector. Thus, the petitioner in violation of the order of this Court and undertaking affidavit had committed the offence under Section 406 and Section 36-A of Tamil Nadu Mines and Minerals Concession Rules. On conclusion of the investigation, charge sheet was filed before the trial Court. During trial, the prosecution examined 11 witnesses and marked 6 documents and 2 Material Objects. Neither any witness examined nor any documents marked on the side of the defence. On completion of trial, the trial Court convicted the petitioner as stated above. Aggrieved over the same, the petitioner preferred appeal before the learned Principal District and Sessions Judge, Cuddalore in

Crl.A.No.122 of 2018 and the same was dismissed by judgment dated 24.09.2020, confirming the judgment of the trial Court.

5.The learned counsel for the petitioner submitted that the trial Court convicted the petitioner only for offence under Section 406 IPC. In this case, there is no evidence to prove the charge of the accused committing criminal breach of trust. He further submitted that there are lot of discrepancies and contradictions in the evidence adduced by the prosecution. The learned counsel further submitted that though the complaint [Ex.P1] is addressed by PW2, it has been signed by PW1, for which no reason has been given. Further, there have been considerable amount of delay in lodging the FIR. The lower Court had given a finding that though the petitioner was involved in several cases of similar in nature, no document or evidence was produced by the prosecution to substantiate the same. The lower Court without any material had given such finding.

6.The learned counsel for the petitioner further submitted that the defacto complainant as well, the respondent Police have no jurisdiction and loco standi to register a case against the petitioner, since the allegation is that the petitioner violated the condition of a bond executed before the RDO. In this case, the concerned RDO was not examined as witness. The thrust of the case is that the petitioner was again involved in the crime on 08.02.2005, for which, no case has been registered. The lower Court failed to consider the provisions of Rule 36 of Tamil Nadu Mines and Minerals Concession Rules, 1959, is no way connected with the above case. In this case, no independent witness were examined and the driver of the vehicle was also not examined in any event, the offence under Section 406 is not made out. The trial Court had given a finding merely on surmises and conjectures. The lower Appellate Court did not independently assesses the evidence and materials and mechanically dismissed the appeal, confirming the judgment of the trial Court.

7.The learned counsel for the petitioner further submitted that the petitioner is a senior citizen, aged about 64 years and he has age related ailments and he is undergoing constant medication. The petitioner has surrendered on 02.11.2020 before the trial Court and presently lodged at District Jail, Villupuram District.

8.The learned Additional Public Prosecutor appearing for the respondent submitted that PW1 is a Assistant Geologist attached to the Department of Geology and Mining. PW2 is its Assistant Director instructed PW1 to lodge a complaint [Ex.P1] against the petitioner. On receipt of the complaint, PW8 registered an FIR in Crime No.70 of 2015 [Ex.P5]. During enquiry, it came to light that the petitioner's vehicle was earlier involved in similar offence during August 2004. The vehicle TN 57 9582 was seized and the revenue authorities initiated confiscation proceedings and imposed fine of Rs.20,000/-. The petitioner, in

the meanwhile, approached this Court by way of filing a Writ Petition in W.P.No.23752 of 2004 and obtained order for return of vehicle, in which one of the condition that the petitioner to give affidavit of undertaking before the Revenue authorities that the vehicle would not be used for similar kind of activities. Contrary to the affidavit of undertaking given, the petitioner again committed the offence by illegally transported the river sand.

9.The learned Additional Public Prosecutor further submitted that PW3 and PW5 are the working in the office of Sub Collector, who clearly stated about the petitioner submitting the order of this Court and affidavit of undertaking [Exs.P2 & P3]. PW4 is the Notary Public, who confirmed the petitioner sworn the affidavit on 19.08.2004. PW6/the Head Constable is the witness for the seizure of the vehicle and the sand. Exs.P4 & P6 are the relevant mahazars. PW7/the Photographer took photograph of the sand laden lorry and the photographs were marked as MO2. PW9 is the Investigating Officer, who took up the investigation from PW8, examined the witnesses, collected the documents and materials and filed charge sheet before the trial Court. The trial Court on the evidence and materials produced, finding that the petitioner in violation of the order of this Court and undertaking affidavit given before the public authority and the manner in which the trust to be discharged, had committed the offence of criminal breach of trust. Further, taking into consideration the petitioner was involving in the similar nature of offence in regular basis, had convicted the petitioner and the the lower appellate Court confirmed the same and dismissed the appeal of the petitioner.

10.This Court considered the rival submissions and perused the materials available on record.

11.It is seen that PW1 and PW2 are the officials from Geology and Mines Department, who intercepted the vehicle of the petitioner bearing registration number TN 57 9582 for illegally transporting the river sand. Thereafter, the vehicle was produced before the respondent Police. During investigation, it was found that the petitioner violated the order of this Court and the undertaking given, which is in clear violation of law. PW3 and PW5, who are from the office of Sub Collector, state about the petitioner submitting the undertaking affidavit and the order of this Court. PW4 is the Notary Public, before whom, the affidavit was sworn by the petitioner.

12.Admittedly, in this case, the concerned RDO, before whom the affidavit of undertaking was filed, was not examined and the driver of the lorry, neither arrayed as accused nor a witness in this case. The violation of affidavit, executed before the public servant and in the absence of concerned public servant, lodging the complaint against the petitioner, is a moot point in this case. Further, the lower Court listed nine cases against the petitioner, in which he is involved which are similar

nature, is without any material. Further, there are several infirmities in the prosecution case and arguable points involved in the revision. The revision is not likely to be taken up for final hearing in the near future, hence, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

13. 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 Judicial Magistrate No.II, Chidambaram 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 first working day of every English Calendar Month at 10.30 a.m., till the disposal of the appeal. The petition is ordered.

-sd/-

05/11/2020

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 PRINCIPAL DISTRICT AND
SESSIONS JUDGE, CUDDALORE.

2 THE JUDICIAL MAGISTRATE NO.II,
CHIDAMBARAM.

3 THE CHIEF JUDICIAL MAGISTRATE
CUDDALORE [FOR INFORMATION]

4 THE SUPERINTENDENT,
DISTRICT JAIL,
VILLUPURAM.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
CHIDAMBARAM TALUK POLICE STATION,
CUDDALORE DISTRICT.

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

Order

in
CRL MP.6267/2020

in
CRL RC.889/2020

Date :05/11/2020

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