

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.10.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.M.P.No.6552 of 2020

in

CrI.A.No.430 of 2020

S.Gnanavadivelu

... Petitioner

Versus

The State rep. by
The Inspector of Police,
V & Ac Police Unit, Puducherry.
(Crime No.6 of 2007)

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure, to suspend the sentence imposed in Spl.CC.No.13 of 2014 on the file of the Special Judge at Puducherry under Prevention of Corruption Act, 1988, dated 30.09.2020 and enlarge the petitioner on bail till the disposal of the appeal.

For Petitioner : Mr.N.R.Elango, Senior Counsel
Ms.Aruna Elango

For Respondent : Mr.Bharatha Chakaravarthy
Public Prosecutor

ORDER

The petitioner along with another accused/A1 were charged and tried before the Special Judge, Puducherry under Prevention of Corruption Act, 1988, for the offence under Sections 420 r/w 34, 468 r/w 34, 471 r/w 34 IPC and Section 7 of Prevention of Corruption Act. On completion of trial, the Trial Judge acquitted A1 of all the charges and convicted A2. For the offence under Section 420 IPC the petitioner/A2 was imposed to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/- in default to undergo Rigorous Imprisonment for three months; for the offence under Section 468 IPC the petitioner/A2 was imposed to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/- in default to undergo Rigorous Imprisonment for three months; for the offence under Section 471 IPC the petitioner/A2 was imposed to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/- in default

to undergo Rigorous Imprisonment for three months and all the sentences shall run concurrently. Hence, the petitioner seeks suspension of sentence.

2. The gist of the case is that the respondent had filed charge sheet against the petitioner/A2 and other accused/A1 stating that prior to 31.10.2006, at the office of the Deputy Inspector of Schools, Zone-I, Puducherry, A1/Loganayaki, the Primary School Teacher, Government Primary School, Puducherry was having two dates of birth viz., 02.10.1946 in her S.S.L.C Certificate with Serial No.047514D and 27.09.1942 in her Trained Teacher's Certificate as entered in her service book, in furtherance of common intention with A2/Senior Accounts Officer in the Office of Deputy Director of Education (Women), Education Department, Puducherry, who was entrusted with the service book of A1 for custody, fraudulently and dishonestly suppressed the fact of actual dates of birth of A1 and cheated the Department of Education, Government of Puducherry thereby allowed A1 to get salary and other allowances for illegal over stay in the Government Service beyond the actual date of superannuation and caused wrongful loss to a tune of Rs.8,19,793 to the Government of Puducherry. The petitioner by misusing his official post has made a false entry by causing, over writing in the service book of the A1 by showing incorrect dates of birth to retain her in the Government Service beyond the date of superannuation and thereby both the accused forged the service book of A1 for the purpose of cheating the Department of Education, Government of Puducherry. The petitioner/A2 had obtained bribe of Rs.4.7 lakhs from A1 as a reward for regularizing the over stay. Hence, the case came to be registered.

3. The prosecution examined P.W.1 to P.W.18 as witnesses and marked Exs.P1 to P25 and on the side of the defence no witness was examined and Exs.D1 to D5 were marked.

4. The contention of the learned senior counsel for the petitioner is that the Lower Court failed to look into the fact that there is mention about two dates of birth in the service book of A1/Loganayaki. The petitioner has never suppressed the dates of birth of A2 in the service book. The Lower Court got swayed by the evidence of P.W.4 to P.W.6. These witnesses have not stated anything about the petitioner and their statements are highly unreliable. P.W.5 has only prepared the retirement note file and P.W.4 signed in the note file as the retirement year is 2006 based on the dates of birth found in the service book. The witnesses P.W.4 to P.W.6 had given to the documents contra version at the instance of the respondent. The Lower Court failed to consider the evidence of P.W.2, the Director of Education Department who admits that the petitioner being a Senior Accounts Officer received papers from A1 and sent the same to the Directorate of Accounts and Treasuries for the pension of A1. The Lower Court failed to consider Ex.D1/the service particulars of said Loganayaki/A1, which is a prosecution document, marked as defence exhibit. The two dates of birth are mentioned by the said Loganayaki/A1 which is admitted by P.W.5 and P.W.6. The two dates of birth of said Loganayaki was available in

the service book. The Lower Court further failed to consider Ex.D2, wherein it is mentioned that the date of retirement was fixed based on the S.S.L.C certificate. The petitioner had sent the original S.R Book of Loganayaki to Directorate of Accounts and Treasuries and it is the duty of the officers of Directorate of Accounts and Treasuries to decide as to which date of birth to be taken into consideration, whether the date of birth found in the Teacher Training Certificate or S.S.L.C Certificate. The Lower Court without any material has come with the new version that the first page of the S.R. Book was peeled and altered by the petitioner, the investigating officers/P.W.17 and P.W.18 admit that they have not taken any steps to send Ex.P3/S.R. Book of A1 to the expert opinion. Though the Trial Court admits the same, it further gives an explanation that since Ex.P3 was in custody of the petitioner, the petitioner ought to have offer explanation for the same. In this case, the peeling and alteration has not been proved. There is no materials to show whether the front page of the S.R. Book was peeled before or after entrustment of custody with the petitioner.

5. The learned counsel for the petitioner further submitted that the entire case of the prosecution is that the petitioner for the benefit of A1, created forged documents by suppressing the real age. In this case, A1 is acquitted from all the charges. The petitioner had confronted the witnesses during cross examination about the availability of two dates of birth of A1 and the witnesses have also admitted the same. In such circumstances, by no stretch imagination, it could be stated that the petitioner is the reason for the forgery. He further submitted that the Trial Court failed to consider the cross examination and the defence exhibits produced. The Trial Court once coming to the conclusion that no case has been made against the other accused and acquitted A1 and the same benefit ought to have been extended to the petitioner/A2.

6. The Additional Public Prosecutor submitted that in this case the petitioner was tried along with other accused/A1, who was a teacher. The petitioner was the Senior Accounts Officer. The other accused/A1 has two dates of birth, one in the year 1942 and another in the year 1946. These variants in dates of birth found in her Teacher Training Certificate and in the S.S.L.C Certificate. Though there are two different dates of birth found in the certificates of A1, no steps was taken by the petitioner to get the anomaly clarified and knowingly allowed A1 to continue in service and receive extra salary and benefits. P.W.4 to P.W.6, who were working along with the petitioner clearly stated that the petitioner was aware of the anomaly of the dates of birth of the other accused. The petitioner had taken personal care in forwarding the S.R. Book of A1 to the Directorate of Accounts and Treasuries. Earlier there was an in-house inquiry and the documents were verified, on the enquiry it was found that the petitioner had created forged document, and hence, the case came to be registered. The Trial Court on analysing the materials had rightly convicted the petitioner. He further submitted that the Trial Court had suspended the sentence of the petitioner till 29.10.2020.

7. Considering the rival submissions and perusal of the materials, it is seen that the dates of birth in Ex.P3/Service book of A1 was not withheld by the petitioner/A2. Further the Ex.P3 was dealt by P.W.4 and P.W.5 at that time, there is no mention of any peeling and alteration. Further, they had perused the Service Register without any remarks, later in their oral evidence they had improved their version, which causes some doubt. Added to it, on the same set of evidence, A1 in this case has been acquitted and there are several infirmities in the prosecution case and arguable points involved in the appeal. The lower Court already suspended the sentence of the petitioner and the appeal 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.

8. 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) each with two sureties each for a like sum to the satisfaction of the Special Judge at Puducherry under Prevention of Corruption Act, 1988, 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 English Calendar Month at 10.30 a.m. till the disposal of the appeal.

-sd/-

29/10/2020

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 AT
PUDUCHERRY (UNDER PREVENTION OF
CORRUPTION ACT, 1988)

2 THE PUBLIC PROSECUTOR
PUDUCHERRY

3 THE INSPECTOR OF POLICE,
V AND AC POLICE UNIT,
PUDUCHERRY.

C.C. to M/S.ARUNA ELANGO Advocate on payment of necessary
charges

Order

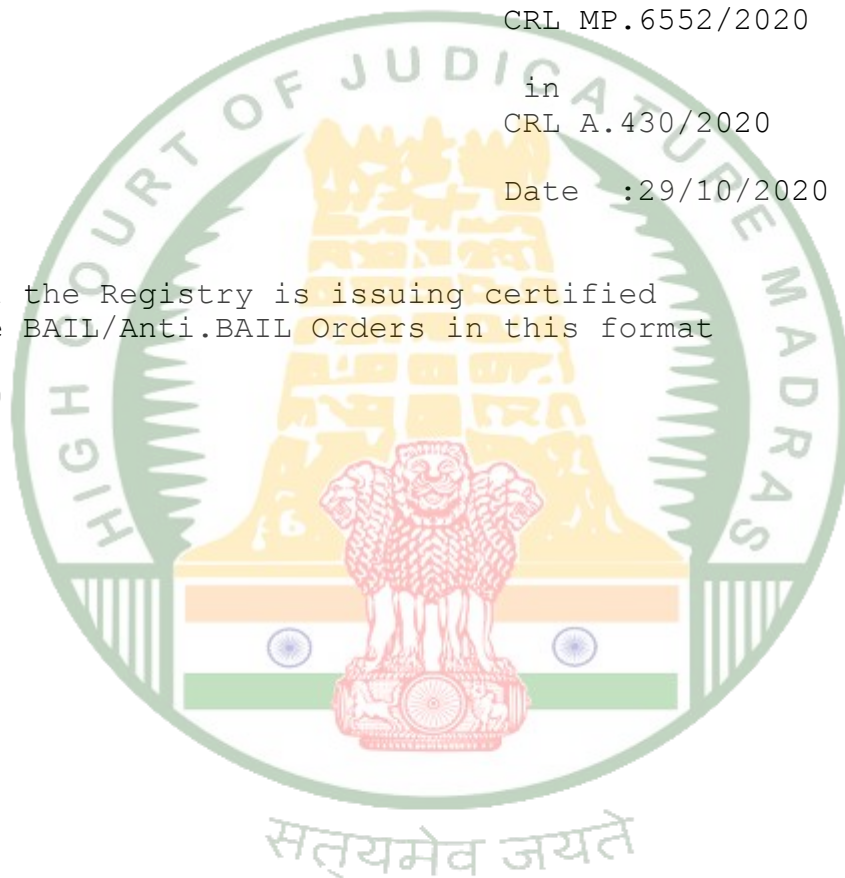
in
CRL MP.6552/2020

in
CRL A.430/2020

Date :29/10/2020

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RVR 02/11/2020



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