

Crl.MP.No.8508 of 2020
in
Crl.A.No.523 of 2020

A.D.JAGADISH CHANDIRA, J.,

This petition has been filed to suspend the sentence imposed upon the petitioners in Spl.C.C.No.50 of 2014 by the learned Special Judge (Special Court for trial of cases under the Prevention of Corruption Act), Salem on 27.11.2020 pending disposal of the above Criminal Appeal.

2. The appellants herein are the accused in Spl.C.C.No.50 of 2014 on the file of the learned Special Judge (Special Court for trial of cases under the Prevention of Corruption Act), Salem. The 1st Appellant was found guilty of the offences u/s.13(1)(e) r/w 13(2) of the Prevention of Corruption Act, 1988 and he has been convicted and sentenced as under:

S.No.	Conviction	Sentence
1.	13(1)(e) r/w 13(2) of P.C Act, 1988	3 years S.I. and fine of Rs.1,00,000/- in default to undergo S.I for 1 year

The 2nd Appellant was found guilty of the offences under Section 109 IPC r/w 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 and she has been convicted and sentenced as under:

S.No.	Conviction	Sentence
1.	109 IPC r/w 13(2) r/w 13(1)(e) of P.C. Act, 1988	3 years S.I. and fine of Rs.1,00,000/- in default to undergo S.I for 1 year

Aggrieved over the same, the petitioners have preferred this appeal and also filed the petition for suspension of sentence.

3. The case of the prosecution is that the 1st Appellant was working as Forest Officer in Namakkal Range from 20.07.1999 to 15.05.2003 and from 15.05.2003 to 05.09.2005 in Mettur range and he is a public servant during the check period. The 2nd Appellant is the wife of the 1st Appellant and as such she is a private individual. During the check period from 01.07.2002 to 31.12.2003, the 1st Appellant was in possession of disproportionate assets worth Rs.26,79,329.57/- in his name and in the name of his wife/the 2nd Appellant and that she abetted the 1st Appellant in the acquisition of

properties and possession of the same. After the trial, the Court below found the accused/petitioners guilty and convicted and sentenced them u/s.13(1)(e) r/w 13(2) of the Prevention of Corruption Act, 1988 and 109 IPC r/w 13(2) read with 13(1)(e) of the Prevention of Corruption Act, 1988 respectively.

4. The learned counsel for the Appellants would submit that the trial Court had not analyzed the evidence placed before it in proper and broad perspective and the trial court had not appreciated the evidence of witnesses Dws 1 to 8. Further, the trial Judge has failed to consider the legal point that the offence under Section 109 IPC could not get attracted against the 2nd Appellant. Though conspiracy can be proved by inference, as far as abetment is concerned, there must be some material, definite or specific evidence to show in what manner or mode, the 2nd Appellant instigated the 1st Appellant in the commission of the offence under Section 13(1)(e) of P.C. Act 1988 and in the absence of the same, the 2nd Appellant cannot be roped in for the offence under Section 109 IPC r/w 13(2) r/w 13(1)(e) of P.C. Act 1988. He would submit that no preliminary enquiry has

been conducted before proceeding against the Public Servant for the offence under the P.C. Act, 1988. He would further submit that the petitioners have surrendered before the trial Court on 18.01.2021 and they have been remanded to custody before the Central Prison, Salem. He would submit that there are several arguable points and that the petitioners have got a good case for acquittal and would pray that the substantive sentence imposed against the petitioners may be suspended. He would also submit that the fine amount has been paid and that the sentence has been suspended by the trial Court till 23.12.2020.

5. The learned Government Advocate (Crl. Side) has raised objections for suspending the sentence.

6. Taking into consideration the submissions made by the learned counsels, the substantive sentence of imprisonment alone is suspended.

7. Hence, the sentence of imprisonment imposed on the petitioners/appellants by the trial Court alone is hereby suspended till the disposal of the appeal and the petitioners/appellants are ordered to be enlarged on bail on their executing a separate bond for Rs.25,000/- [Rupees Twenty five thousand only] with two sureties each for a like sum to the satisfaction of the learned Special Judge (Special Court for trial of cases under the Prevention of Corruption Act), Salem, and on further condition that the petitioners/appellants shall report before the trial Court on the first working day of every English Calendar month at 10.30 a.m., until further orders.

19.01.2021
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Note: Issue order copy on 19.01.2021.

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