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Crl.M.P.No.14724 of 2022
in Crl.A.No.862 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.09.2022

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.14724 of 2022
in
Crl.A.No.862 of 2022

Ashok Kumar

... Petitioner/Accused-2

Vs.

State by
The Inspector of Police,
Vigilance and Anti-Corruption,
Nagapattinam.
(Crime No.04 of 2013)

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389 (1) of Cr.P.C to suspend the sentence imposed upon the appellant/A2 by the Chief Judicial Magistrate at Thiruvarur District in Special Calendar Case No.04/2015 dated 14.07.2022 and release the appellant/A2 on bail pending disposal of the above appeal.

For Petitioner : Mr.P.R.Dinesh Kumar

For Respondent : Mr.S.Udhayakumar
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner/A2, seeking suspension of sentence of imprisonment imposed by the learned Chief



Crl.M.P.No.14724 of 2022
in Crl.A.No.862 of 2022

Judicial Magistrate/Special Judge, Thiruvarur District by judgment dated 14.07.2022 made in Spl.C.C.No.04 of 2015 and enlarge the petitioner/appellant on bail pending disposal of the above Criminal Appeal.

2. The petitioner/appellant herein is the accused in Spl.C.C.No.04 of 2015 on the file of the Chief Judicial Magistrate Court, Thiruvarur. He was found guilty for the offences punishable under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act and he has been convicted and sentenced as under:

Petitioner /Accused	Conviction	Sentence
Petitioner/ Accused	Sections 7 of the Prevention of Corruption Act, 1988.	To undergo simple imprisonment for a period of three years and to pay a fine of Rs.1,000/-, in default to undergo simple Imprisonment for three months.
	Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988.	To undergo simple imprisonment for a period of two years and to pay a fine of Rs.1,000/-, in default to undergo simple Imprisonment for two months.
The sentences are directed to run concurrently		
Total fine imposed against the petitioner/Accused is Rs.2,000/-		

3. Challenging the above conviction and sentence, the petitioner/accused has filed Crl.A.No.862 of 2022 along with the instant miscellaneous petition seeking suspension of sentence and bail.



Crl.M.P.No.14724 of 2022
in Crl.A.No.862 of 2022

WEB COPY

4. The case of the prosecution is that on 13.07.2013 at about 13.00 hours, at Thiruvarur Taluk Office, A1/R.Ravichandran, who is the Revenue Inspector and A2/petitioner, who is the Village Administrative Officer, demanded Rs.50,000/- as bribe from the de-facto complainant/S.H.Shajahan for themselves as gratification other than legal remuneration, as a motive or reward, for doing their official act, for handing over the four vehicle keys, i.e. JCB, Dozer and two Tractors, which were seized by them. Again on 13.07.2013 at about 18.00 hours, the accused 1 and 2 have reiterated their earlier demand on bribe of Rs.50,000/- from the de-facto complainant for handing over the four vehicle keys without taking action against the de-facto complainant under Mines and Minerals Act. In pursuance of the aforesaid demands, on 15.07.2013 at about 16.10 hours at the de-facto complainant's Udhayam Marketing Shop, Thiruvarur, the first accused reiterated their demand and obtained Rs.50,000/- from him as illegal gratification for handing over the four vehicles keys. Hence, the case has been registered.

5. Before the trial Court, on the side of the prosecution 14 witnesses examined as P.W.1 to P.W.14 and marked 18 documents as Exs.P1 to P18 and marked 5 material objects as M.O.1 to M.O.5. On the side of the defence, 3



Crl.M.P.No.14724 of 2022
in Crl.A.No.862 of 2022

witnesses examined as D.W.1 to D.W.3 and marked 2 documents as Exs.D1 and D2.

6. The contention of the petitioner is that the petitioner is the Village Administrative Officer of Alivalam Village, Thiruvarur District. The de-facto complainant/P.W.2 illegally carried the minerals, which was questioned by the petitioner as well as the Revenue Inspector/A1, who had also seized the four vehicles, i.e. JCB, Dozer and two Tractors. Thereafter the case has been projected as though for release of vehicles, bribe amount of Rs.50,000/- has been demanded. A complaint has been lodged on 15.07.2013, on which date, A1 said to have gone to the shop of de-facto complainant and received the money in the presence of P.W.4. Thereafter, the Trap Laying Officer/P.W.12 caught A1 red handed and the case was projected against the petitioner as though at the instigation of the petitioner, A1 made demand and further the decoy witness had called the petitioner over mobile phone during the relevant time. Hence, there was a conspiracy. Admittedly, the petitioner was not present during the trap. He further submitted that P.W.2 had deposed in Chief, thereafter his cross examination was deferred for examining identical witnesses, namely, P.W.4 and P.W.12. After completion of evidence of P.W.4 and P.W.12,



Crl.M.P.No.14724 of 2022
in Crl.A.No.862 of 2022

the petitioner had recalled the deferred witness, by that time, P.W.2 passed away. Earlier, this Court, dismissed the suspension petition on the ground that P.W.2 failed to be cross examined and hence, his evidence stands unchallenged. Further, non observance of Rule 47 of the DVAC Manual would not affect the case of the prosecution. Hence, the petition was dismissed. After dismissal of the petition, the petitioner had surrendered before the trial Court and now he is confined in Central Prison, Trichy from 17.08.2022. Learned counsel further submitted that the petitioner has paid the fine amount of Rs.2,000/- . Further, the petitioner has arguable points and fair chance of success in this appeal. Thus, he prayed for Suspension of Substantive Sentence of Imprisonment imposed on the petitioner till the disposal of the appeal.

7. Learned Government Advocate (Crl.Side) appearing for the respondent/Police submitted that the petitioner/Village Administrative Officer along with A1 conspired together and demanded illegal gratification of Rs.50,000/- for release of four vehicles, i.e. JCB, Dozer and two Tractors of the de-facto complainant and also not to initiate any proceedings against the de-facto complainant under Mines and Minerals Act. He further submitted that A1 came to the shop of P.W.2/de-facto complainant and received the money in the



Crl.M.P.No.14724 of 2022
in Crl.A.No.862 of 2022

presence of P.W.4, caught red handed by P.W.12. Prior to the trap, all the pre-trap formalities complied with. The forensic evidence confirms the receipt of illegal bribe money by A1, who had kept the same in his shirt pocket. Further, they failed to cross-examine P.W.2. On the evidence and materials produced before the Court, the trial Court had convicted the petitioner. He further submitted that after dismissal of the earlier suspension of sentence, the petitioner now surrendered on 17.08.2022. However, the learned Government Advocate objected for the suspension of sentence of the petitioner.

8. On a perusal of the material, it is seen that P.W.2 is the decoy witness. His cross examination was deferred by the trial Court under Section 242(3) Cr.P.C. This provision is provided to defer cross examination of identical witnesses, since the defence of the accused would get exposed. The trial Court having allowed to defer the cross examination of P.W.2, in the meanwhile, due to some reason P.W.2 was not available, will not automatically make his evidence admissible and considered to be unchallenged. With regard to P.W.4, who is the shadow witness had stated nothing about the other demand and receipt of money. Further the admitted case of the prosecution is that the petitioner was not present during the trap. The only allegation is that he had



Crl.M.P.No.14724 of 2022
in Crl.A.No.862 of 2022

made a demand earlier and further P.W.2 had called the petitioner over his mobile phone. No call details have been produced. It is also to be seen that A1 had examined himself as D.W.1 and he had marked Exs.D1 and D2, which are Fine Register and Receipt, respectively, which was imposed on the de-facto complainant/P.W.2. It would suggest a motive for the Revenue officials for taking action against him.

9. Considering the facts and circumstances of the case and also taking note of the fact that there are arguable points involved in this appeal and it would take some time for the appeal to be taken up for final hearing, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.

10. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner is ordered to be enlarged on bail, on condition that he 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 Chief Judicial Magistrate/Special Judge, Thiruvarur.



WEB COPY



Crl.M.P.No.14724 of 2022
in Crl.A.No.862 of 2022

M. NIRMAL KUMAR, J.

rsi

11. Further, the petitioner is directed to appear before the trial Court on the first working day of every English Calendar month at 10.30 a.m., until further orders.

22.09.2022

rsi

To

- 1.The Inspector of Police,
Vigilance and Anti-Corruption,
Nagapattinam.
- 2.The Chief Judicial Magistrate/Special Judge,
Thiruvarur.
- 3.The Superintendent,
Central Prison, Trichy.
- 4.The Public Prosecutor,
High Court, Madras.

Crl.M.P.No.14724 of 2022
in
Crl.A.No.862 of 2022