



CrI.M.P.No.14272 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CrI.M.P.No.14272 of 2022

and

CrI.A.No.1064 of 2022

J.Gunasekaran, M/A 57,
S/o.G.Jayaraman,
Formerly Commercial Inspector,
Office of the TNEB,
Egmore,
Chennai 600 008.
Residing at
No.32/48, Chinna babu Street,
Nammalwarpet,
Chennai 600 012.

... Petitioner

Vs

State by
Inspector of Police,
Vigilance and Anti corruption,
Chennai City II
Chennai 600 028
(Cr.No.22/AC/2012-CC-2)

... Respondent

PRAYER: Criminal Original Petition filed under Section 389 (1) r/w.439
of the Code of Criminal Procedure, to suspend the sentence imposed on



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the Petitioner by the Special Judge, Special Court for the Cases under P.C.Act, Chennai made in C.C.No.2 of 2014 dated 24.08.2022 and enlarge the Petitioner on bail, pending disposal of the above Criminal Appeal.

For Petitioner : Mr.K.Venkataramani
Senior Counsel
for Mr.M.Muthappan

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

ORDER

The Petitioner/Accused in C.C.No.2 of 2014, convicted by the trial Court on 24.08.2022 and he was sentenced to undergo rigorous imprisonment for one year under Section 7 of Prevention of Corruption Act, 1988 & to pay a sum of Rs.1000/- as fine, in default, to undergo simple imprisonment for three months and rigorous imprisonment for two years under Section 13(2) r/w. 13(1)(d) of Prevention of Corruption Act & to pay a sum of Rs.1000/- as fine, in default, to undergo simple imprisonment for three months. Against the said conviction the present Appeal and suspension of Sentence Petition have been filed.



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2.The case of the prosecution is that PW2/Defacto Complainant is the Manager of the Builder, who said to have approached the Petitioner for getting three phase connection on 12.12.2012 and the Petitioner is said to have demanded a sum of Rs.40,000/- on 14.12.2012, thereafter it was reduced to Rs.35,000/- and second demand was made on 18.12.2012. On the complaint of PW2, trap was made, the Defacto Complainant/PW2 and accompanying witness/PW3 have come to the office of the Petitioner. At that time as per demand, the Defacto Complainant paid a sum of Rs.10,000/- as bribe amount to the Petitioner. PW6/Trap Laying Officer on getting instructions, caught the accused/Petitioner red handed and recovered the tainted money from the pocket of the Petitioner. Phenolphthalein test was conducted by PW6, which confirmed the receipt of tainted money. Thereafter, on completion of investigation, final report has been filed.

3.The contention of the Petitioner is that the Petitioner has been falsely implicated in this case. The Petitioner is only a Commercial



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Inspector to inspect the premises for providing three phase electricity connection, to find out the requirement of materials to be purchased including cable and further expenditure involved, other than that the Petitioner has got no other connection in giving electricity connection. The Defacto Complainant has not complied with the requirements of the department and hence used this trap proceedings, to somehow get the connection. Further the tainted money was thrust on the Petitioner, when he was sitting in his office and working. To prove the said case, DW1 and DW2, who were sitting next to the Petitioner were examined. To confirm the same, Petitioner also got into the box under Section 315 of Cr.P.C., and made his explanation. The trial Court failed to consider these aspects in this proper prospective.

4.Further it is submitted that PW2 is the Defacto Complainant and PW3 is the accompanying witness. It is normal that only after completion of chief examination of both decoy and accompanying witness, witnesses are thereafter cross examined, otherwise the defence of the accused will get exposed, causing great prejudice. That is reason



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Section 243(2) Cr.P.C., is available. The Petitioner had deferred the cross examination of PW2. The trial Court also agreed to the same, thereafter recalled PW2 and PW3 for cross examination. In the meanwhile PW2 passed away. Hence, the evidence of PW2 would not be challenged and have to be eschewed. On the other hand, PW3 in his cross examination clearly stated that he had accompanied PW2, but not seen any demand or acceptance of bribe by the Petitioner.

5.Before the trial Court, evidence of PW1 to PW7 were recorded and Ex.P1 to Ex.P.18 and M.O.1 to M.O.5 were marked by the prosecution. On the side of the Petitioner three witnesses were examined as DW1 to DW3 and Ex.D.1 to Ex.D.9 were marked and Court document was marked as Ex.C1.

6.Mr.S.Udayakumar, learned Government Advocate (CrI. Side) appearing for the State submitted that in this case on the complaint of PW2, a case has been registered. PW6/Trap Laying Officer fixed the official witness/PW3 and another witness and conducted pre-trap



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proceedings. Thereafter trap was laid, PW2 and PW3 confirmed the demand and acceptance and receipt of bribe amount by the Petitioner. PW4/Scientific Officer, conducted the phenolphthalein test. PW3 state about the procedure, before the trial Court. Thus, the trial Court after considering the evidence and materials produced, rightly convicted the Petitioner. It is further submitted that the Court below had suspended the Petitioner's sentence till 26.09.2022.

7.Taking into consideration the facts and circumstances of this case, finding there are arguable points in this Appeal, further it is a statutory Appeal and the Court below had already suspended the sentence till 26.09.2022. Further it would take some time for the Appeal to be taken for final hearing. Hence, this Court is inclined to suspend the sentence imposed on the petitioner.

8.Accordingly, the sentence of imprisonment alone is suspended and the petitioner shall be released on bail on executing a bond for a sum of Rs.10,000/- with two sureties each for a likesum to the satisfaction of



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the learned Special Judge, Special Court for the Cases under Prevention of Corruption Act, Chennai and on further condition that the petitioner shall report before the trial Court on the first working day of every month at 10.30 a.m, pending disposal of the Criminal Appeal.

14.09.2022
(½)

Index: Yes/No

Internet: Yes/No

Speaking order/Non-speaking order

sai

To
The learned Special Judge,
Special Court for the Cases under P.C. Act,
Chennai.



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M.NIRMAL KUMAR, J.

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Dated: 14.09.2022
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