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Crl.MP.No.14357 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.MP.No.14357 of 2022

in

Crl.A.No.1067 of 2022

A.Sakthivel, M/A-52 years,
S/o.Annamalai,
Ex-Assistant Engineer,
Tamil Nadu Electricity Board,
Kangeyam South O & M Office,
(Formerly Erode District)
Tiruppur District.

... Petitioner

Vs.

State Rep. by
Inspector of Police,
Vigilance and Anti-Corruption,
Tiruppur, Tiruppur District.
Crime No.01/AC/2006/ER

... Respondent

PRAYER: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to suspend the sentence passed in Spl.C.C.No.15 of 2014 dated 25.08.2022 on the file of the learned Chief Judicial Magistrate, Tiruppur and enlarged the Petitioner on bail pending disposal of Criminal Appeal.



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

ORDER

The Petitioner convicted by the learned trial Judge by order dated 25.08.2022. The Petitioner was sentenced to undergo rigorous imprisonment for two years under Section 7 of Prevention of Corruption Act, 1988 & to pay a sum of Rs.5,000/- as fine, in default, to undergo simple imprisonment for six 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.5,000/- as fine, in default, to undergo simple imprisonment for six months.

2.The gist of the case is that PW2/Defacto complainant has approached the Petitioner for enhancement of power from 10 hp to 20 hp for his use, for which, the Petitioner is said to have demanded a sum of Rs.5,000/- on 09.12.2005, on the same day, he had received a sum of Rs.2000/-. Thereafter, on 19.12.2005, second demand was made, on the same day, he had received a sum of Rs.1,000/- and the third demand was made on 11.01.2006. The



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Defacto Complainant was unable to bear any further and was not agreeable to the same and lodged a complaint to the Respondent, who registered a case in Cr.No.1 of 2006. Thereafter, the trap was laid. PW2 is the decoy witness. Both PW2 & PW3 entered the office of the Petitioner on 12.01.2006, at that time, on demand, a sum of Rs.2,000/- was handed over to the Petitioner and thereafter, Trap Laying Officer/PW12, alongwith PW5 conducted the recovery proceedings, tainted money was recovered, which was confirmed by PW11/Forensic Officer. The investigation was carried out by PW13, who had examined PW6 to PW10 and after obtaining sanction, PW14 filed final report.

3.In the trial Court PW1 to PW14 were examined. Ex.P.1 to Ex.P.36 were marked and M.O.1 to M.O.5 were marked. On the side of the defense, two witnesses viz., D.W.1 to D.W.2 were marked and Ex.D.1 to Ex.D.3 were marked.

4.The contention of the Petitioner is that the Petitioner had been falsely implicated in this case. The Petitioner had never made any demand. The



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Petitioner can only recommend to the authorities and it is his superior, who have to approve the recommendation. There was some delay, for which, the Defacto Complainant assumed that the Petitioner is the reason for delay and had lodged false complaint. Even according to the prosecution on 09.12.2005, when PW2 had approached the Petitioner for the first time, on the same day demand for a sum of Rs.5000/- was made and part amount of Rs.2,000/- said to have been paid, likewise, ten days after, on 19.12.2005 another part amount of Rs.1,000/- have been paid. Thereafter, third demand was on 11.01.2006 and the complaint is said to have been lodged. This shows demand is highly artificial. The Defacto Complainant not satisfied the conditions of the Electricity Board. There was some rectification to be carried out. Even according to the prosecution, trap amount of Rs.2000/- was recovered from the writing pad. Without knowledge of the Petitioner, PW2 placed the amount in the writing pad and projected as if, the Petitioner demanded and received the tainted money. The Petitioner was forced to handle the amount. Thereafter, phenolphthalein test was conducted. The amount was not recovered from the Petitioner.



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5.Mr.S.Udaya Kumar, learned Government Advocate (Cr1. Side) appearing for the State submitted that in this case, PW2/Defacto Complainant, lodged the complaint and the Respondent registered an FIR, thereafter, arranged pre-trap proceedings, PW3 & PW5 are the official witnesses. The Petitioner demanded and received bribe amount of Rs.2,000/, thereafter, PW12 along with PW5 entered the office of the Petitioner, recovered the tainted money. The same was confirmed by PW11/Scientific Officer by conducting phenolphthalein test. Other witnesses of the Electricity Board confirmed that the Petitioner had delayed the grant of permission to enhance the power from 10 hp to 20 hp. The trial Court on evidence and materials rightly convicted the Petitioner. It is submitted that the trial Court suspended the sentence of the Petitioner upto 24.09.2022.

6.Taking into consideration the facts and circumstances of the case, the tainted amount has been recovered from the writing pad of the Petitioner and not from the Petitioner. The Petitioner's contention is that he was made to handle the amount, which was available on the writing pad. Therefore, contention of the prosecution that Petitioner demanded and received amount



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as bribe seems to be doubtful. Even according to the prosecution, demand and payment happened between from 09.12.2005 and 11.01.2006, on three occasions, which itself causes doubt. Further Appeal is a statutory Appeal. This Court finds that there are arguable points in the Appeal. Further the Petitioner was on bail, during the investigation and trial Court already suspended sentence of the Petitioner till 24.09.2022. 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.

7. 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 the learned Chief Judicial Magistrate/Special Judge, (under Prevention of Corruption Act), Erode 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.

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To

1. The learned Chief Judicial Magistrate,
Tiruppur

2. The Public Prosecutor,
High Court,
Madras.



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M.NIRMAL KUMAR, J.

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