



Crl.M.P.No.17422 of 2022
in Crl.A.No.1183 of 2022

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2022

CORAM:

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

Crl.M.P.No.17422 of 2022
in
Crl.A.No.1183 of 2022

S.M.Ponnusamy

... Petitioner/Accused

Vs.

The State rep. by
The Inspector of Police,
Vigilance & Anti-Corruption,
Coimbatore, Coimbatore District.
Crime No.11/2012/AC/CB

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389 (1) of Cr.P.C to suspend the sentence of imprisonment imposed in the judgment dated 04.11.2022 made in Special C.C.No.22 of 2013 on the file of learned Special Judge, Special Court for trial of cases under the Prevention of Corruption Act, Coimbatore and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

For Petitioner : Mr.N.Manoharan

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

ORDER

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



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the learned Special Judge, Special Court for trial of cases under the Prevention of Corruption Act, Coimbatore by judgment dated 04.11.2022 made in Spl.C.C.No.22 of 2013 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.22 of 2013 on the file of the learned Special Judge, Special Court for trial of cases under the Prevention of Corruption Act, Coimbatore. He was found guilty for the offences punishable under Sections 7 and 13(1)(d) r/w 13(2) of the 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 three years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo six months simple imprisonment.
	Section 13(1)(d) r/w 13(2) of the Prevention of Corruption Act, 1988.	To undergo three years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default to undergo six months simple imprisonment.
The sentences are directed to run concurrently		
Total fine imposed against the petitioner/Accused is Rs.20,000/-		



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3. Challenging the above conviction and sentence, the petitioner/accused has filed Crl.A.No.1183 of 2022 along with the instant miscellaneous petition seeking suspension of sentence and bail.

4. The gist of the case is as follows:-

The petitioner was working as Deputy Surveyor at Coimbatore North Taluk Office. The de-facto complainant/P.W.2 submitted an application dated 10.09.2012 before the petitioner's office to survey his land measuring an extent of 7.75 acres in SF No.294/1. The de-facto complainant approached the petitioner requesting to survey his land and the petitioner visited the property on 19.09.2012. The survey was conducted on 19.09.2012 by P.W.7/Vadivel. After conducting survey, the petitioner initially demanded Rs.3,000/- per acre, totally Rs.21,000/-. Thereafter, the amount was reduced to Rs.15,000/- on 08.10.2012. The de-facto complainant not willing to pay the bribe amount, hence lodged a complaint before the Inspector of Police, Vigilance and Anti-corruption, Coimbatore and thereafter pre-trap proceedings were conducted. On 10.10.2012, the de-facto complainant along with the accompanying witness/P.W.3 went to the petitioner's office. The de-facto complainant, paid the amount of Rs.15,000/- to the petitioner/accused. Thereafter, the Trap Laying Officer/P.W.10 on getting pre-arranged signal rushed into the office and caught



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the petitioner/accused while receiving bribe amount. Phenolphthalein test turned positive confirming that the petitioner had received bribe amount. Thereafter, the accused was arrested and the amount was recovered. Hence, the case has been registered. The trial Court on completion of the trial, convicted the petitioner/accused as above.

5. Before the trial Court, on the side of the prosecution, 11 witnesses examined as P.W.1 to P.W.11 and marked 13 documents as Exs.P1 to P13 and marked material objects as M.O.1 to M.O.4. On the side of the defence, petitioner examined himself as D.W.1 and marked document as Ex.D1.

6. The contention of the petitioner is that the petitioner employed as Deputy Surveyor. The case projected against him as though he made a demand on 19.09.2012 for a sum of Rs.21,000/- from the decoy witness/P.W.2 for surveying his land measuring to an extent of 7.75 acres. Thereafter, it was projected that the demand was reduced to Rs.15,000/- on 08.10.2012. The complaint was lodged on 10.10.2012, trap laid on the same day. According to the petitioner, on 10.10.2012 the petitioner was in a meeting in Collector's office. P.W.2/decoy witness and P.W.3/accompanying witness said to have been waited for the petitioner from 4.30 p.m. to 6.30 p.m. When the petitioner



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gone to the rest room and came back, a cover was placed along with the files, which was later thrust on the petitioner's pocket and projected as though the trap has been confirmed. One Ponnusamy, who present in the room was not examined, P.W.3 being the official witness toed the line of the prosecution. P.W.10 somehow to succeed in the trap, using another official witness P.W.4, who also toed the line of the prosecution. The survey of the land completed on 19.09.2012 by P.W.7/Firka Surveyor, who surveyed the property. Thereafter, there is no reason for the petitioner to make any demand for already surveyed land. Further submitted that the petitioner examined himself as D.W.1 and through him Ex.D1-The Diary of Taluk Surveyor R.Vadivelu has been marked to prove that on 19.09.2012 the land was already surveyed, further, he had not met the de-facto complainant on that day and made any demand. The trial Court failed to consider these aspects and wrongly convicted the petitioner. The petitioner was on bail during investigation and trial. Learned counsel for the petitioner submitted that the petitioner has paid the fine amount of Rs.20,000/- and the sentence imposed on the petitioner was suspended till 03.12.2022. 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.



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7. Learned Government Advocate (Crl.Side) appearing for the respondent-Police submitted that in this case P.W.1 is the sanction witness, P.W.2 is the decoy witness and P.W.3 is the accompanying witness and P.W.10 is the Trap Laying Officer. The de-facto complainant/P.W.2 earlier made an application for surveying his land on 10.09.2012. Thereafter, it was not considered. On 19.09.2012, a demand of Rs.3,000/- per acre for surveying 7.75 acres, totally Rs.21,000/- was made. Thereafter, on 08.10.2012, the demand was reduced to Rs.15,000/- and finally on 10.10.2012, not willing to pay the demand, P.W.2 lodged a complaint. P.W.10/Trap Laying Officer, who after verifying the credentials of the petitioner had sought service of P.W.3 and P.W.4/official witnesses, explained to them about the pre-trap proceedings. Thereafter, on 10.10.2012, P.W.2 and P.W.3 went to the office of the petitioner, wherein, the petitioner demanded, received bribe amount and kept the same in his shirt pocket. After getting pre-arranged signal, P.W.10 and P.W.4 entered into the office room and recovered money. Phenolphthalein test confirmed the same. Other official witnesses P.W.4, P.W.5 and P.W.6 stated about the procedure followed in the office, which confirms that the petitioner demanded and received the bribe amount. The defence raised by the petitioner were already raised during trial. Considering all the materials, the trial Court had rightly convicted the petitioner. Hence, he opposed for grant of bail.



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8. 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.

9. 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 Special Judge, Special Court for trial of cases under the Prevention of Corruption Act, Coimbatore.

10. 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.

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M. NIRMAL KUMAR, J.

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To

- 1.The Inspector of Police,
Vigilance & Anti-Corruption,
Coimbatore,
Coimbatore District.
- 2.The Special Judge,
Special Court for trial of cases under the
Prevention of Corruption Act,
Coimbatore.
- 3.The Public Prosecutor,
High Court, Madras.

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