



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Friday, the Twenty Eighth day of April Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.4374 of 2023
in
CRL A(MD) No.202 of 2023

P.SIVAKUMAR

... Appellant / Accused

Vs

STATE REP
THE DEPUTY SUPERINTENDENT OF POLICE,
VIGILANCE AND ANTI CORRUPTION,
PUDUKKOTTAI DISTRICT.
(CRIME NO. 05 OF 2011)

... Respondent / Complainant

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the sentence of Imprisonment imposed by the Learned Chief Judicial Magistrate, Pudukkottai, Spl C.C No. 03 of 2013 dated 28.02.2023 and enlarge the petitioner / appellant on bail pending disposal of the above said criminal appeal.

Prayer in CRL A(MD). 202/ 2023 :

To call for the records and set aside the conviction and sentence passed against them by the Learned Chief Judicial Magistrate, Pudukkottai, dated 28.02.2023 made in SPL.CC.No.03 of 2013 by allowing the present criminal appeal.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.DURAI PANDIAN K.S., Advocate for the petitioner and of Mr.R.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondent the court made the following order:-

RESERVED ON	17.04.2023
PRONOUNCED ON	28.04.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner/sole accused by the learned Assistant Sessions Judge, (Chief Judicial Magistrate), Pudukkottai, in Spl.C.C.No.03 of 2013, dated 28.02.2023, till the disposal of this Criminal Appeal.



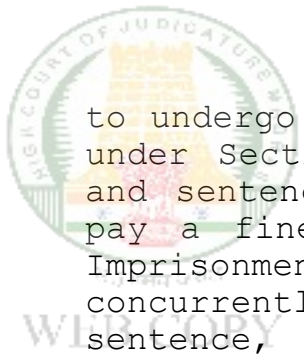
2. The case of the prosecution is that the petitioner accused was working as an Assistant Director and was also holding the post of General Manager, District Industrial Centre, Pudukkottai, that the defacto complainant Vijayakumar, a BBA graduate of Kallur, Thirumayam Taluk, approached the Bank of Baroda, Puduvayal Branch for financial assistance to start a paper cup manufacturing unit, that the Branch Manager instructed him to produce necessary documents including SSI certificate, that the defacto complainant had then approached the petitioner, who was the appropriate authority for issuance of SSI certificate, that the petitioner had demanded Rs.5,000/- as illegal gratification for issuance of SSI certificate and that when the defacto complainant had hesitated, the petitioner reduced the amount and demanded Rs.2,000/- to issue SSI certificate and to get the balance afterwards.

3. It is the further case of the prosecution that since the defacto complainant was not willing to pay any amount to the petitioner, he lodged a complaint on 07.12.2011 at 12.00 hours before the Vigilance and Anti-Corruption Police, Pudukkottai and on the basis of the complaint, FIR came to be registered in Crime No.05 of 2011 and a trap was organized and in pursuance of the trap plan, on the same day at about 16.30 hours, the defacto complainant along with official witnesses met the petitioner, that the petitioner had reiterated his earlier demand and received Rs.2,000/- and kept the same in his left shirt pocket, that on seeing the signal given by the defacto complainant as per their pre-arrangement, the trap laying officer along with his party rushed to the spot and on identification by the defacto complainant, phenolphthalein test was conducted on both the hands of the petitioner and the tainted money of Rs.2,000/- was seized from the shirt pocket of the petitioner and that the shirt pocket of the petitioner was also subjected to phenolphthalein test and the same were proved positive.

4. The respondent police, after completing the investigation, has laid the final report and the same was taken on file in Spl.C.C.No.03 of 2013 on the file of the Chief Judicial Magistrate Court, Pudukkottai.

5. During trial, the prosecution has examined 10 witnesses as P.W.1 to P.W.10, exhibited 23 documents as Ex.P.1 to Ex.P.23 and marked 7 material objects as M.O.I to M.O.VII. The accused has examined himself as D.W.1 and exhibited 12 documents as Ex.D.1 to Ex.D.12.

6. The learned Chief Judicial Magistrate, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 28.02.2023 convicting the petitioner for the offence under Section 7 of Prevention of Corruption Act and sentenced him to undergo 5 years imprisonment and to pay a fine of Rs.5,000/-, in default,



to undergo 1 year Simple Imprisonment and convicted for the offence under Sections 13(2) r/w 13(1)(d) of Prevention of Corruption Act and sentenced him to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 1 year Simple Imprisonment and that the above sentences were ordered to be run concurrently. Aggrieved by the said judgment of conviction and sentence, the accused has come forward with the present Criminal Appeal along with the above application for suspension of sentence.

7. The learned counsel appearing for the petitioner would submit that the petitioner was sent to Central Prison on 28.02.2023, the date of judgment itself and that the petitioner has not committed any offence and the petitioner has got fair chance for acquittal.

8. The learned counsel appearing for the petitioner would further contend that the recovery of tainted money from the petitioner was collected as a contribution for flag day, that though the petitioner has adduced necessary evidence, the trial Court has failed to consider the same, that though the petitioner at the time of recovery has explained the trap laying officer and others, he was not given sufficient time to issue the receipt for flag day money and that therefore the amount that was recovered cannot be termed as illegal gratification.

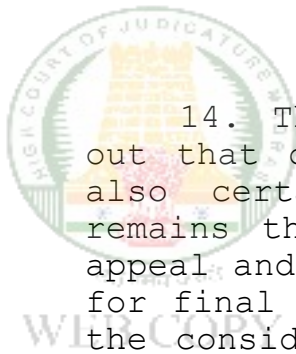
9. The respondent/complainant has filed a counter affidavit denying the averments raised by the petitioner and raised objections for suspending the sentence.

10. The learned Additional Public Prosecutor appearing for the respondent would submit that the prosecution had proved foundational facts regarding initial demand and recovery from the petitioner and hence, the statutory presumption under Section 20 of Prevention of Corruption Act stands in favour of the prosecution and that even though the presumption is rebuttable, the defence did not rebutt the presumption. He would further submit that the petitioner is not having any bad antecedents and that he is in prison from 28.02.2023.

11. The learned counsel appearing for the petitioner would submit that the prosecution has not offered any reason or explanation for the delay in registering the complaint. He would further submit that the petitioner has already paid fine amount.

12. The learned Additional Public Prosecutor appearing for the respondent would submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

13. This Court has carefully considered the rival contentions put forward by either side and also perused the materials available



14. The learned counsel appearing for the petitioner has pointed out that certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The fact remains that there are arguable points involved in this criminal appeal and further the criminal appeal is not likely to be taken up for final hearing in the near future and as such, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

15. Considering the above facts and circumstances of the case and also the facts that the petitioner is in prison from 28.02.2023 and that the petitioner is not having any bad antecedents, this Court is inclined to suspend the sentence imposed on the petitioner.

16. In the result, this Criminal Miscellaneous Petition is allowed. Accordingly, the relief of suspension of sentence and bail is granted to the petitioner on the following conditions:-

(i) The petitioner shall execute a bond for a sum of **Rs.25,000/- (Rupees Twenty Five Thousand only)** with two sureties each for a like sum to the satisfaction of the learned Chief Judicial Magistrate, Pudukottai;

(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity; and

(iii) The petitioner shall appear before the concerned Court daily at 10.30 a.m., until further orders and if he is not able to appear before the trial Court on any day, he shall make arrangements to file an application under Section 317 of Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of his absence, as directed by the trial Court.

sd/-

28/04/2023

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28/04/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CSM

To

1. The Chief Judicial Magistrate,

<https://www.mhcc.madras.gov.in/>



2.The Deputy Superintendent of Police,
Vigilance and anti-corruption,
Pudukottai District.

3.The Superintendent,
Central Prison,
Trichirappalli.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.DURAI PANDIAN K.S, Advocate (SR-7031[I] dated
28/04/2023)

ORDER

IN

CRL MP(MD) No.4374 of 2023
in

CRL A(MD) No.202 of 2023

Date :28/04/2023

ED/SSS/SAR- (28/04/2023) 5P 6C