



WEB COPY

CRL MP(MD)



23

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

Monday, the Twenty Sixth day of June Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.5563 of 2023

in

CRL A(MD) No.276 of 2023

P.SUBBAIAH

... PETITIONER/APPELLANT/SOLE ACCUSED

Vs

State Rep.by
THE INSPECTOR OF POLICE
VIGILANCE AND ANTI CORRUPTION,
PUDUKKOTTAI,
PUDUKKOTTAI DISTRICT.
CRIME NO.4 OF 2009

... RESPONDENT/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 as imposed on the petitioner by means of judgment dated 16.03.2023 made in Spl Calendar Case No.01 of 2010 passed by the Honble Assistant Sessions Judge on bail (Chief Judicial Magistrate), Pudukkottai forthwith and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

PRAYER IN CRL A(MD).276/2023 :

To call for the records and allow the above appeal and consequently set aside the order of conviction and sentence as imposed on him by means of the judgment dated 16.03.2023 passed by the Hon'ble Assistant Sessions Judge (Chief Judicial Magistrate), Pudukkottai, Pudukkottai District in Special Calender Case No.01 of 2010 forthwith.

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.K.C.MANIYARASU, 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	22.06.2023
PRONOUNCED ON	26.06.2023

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.01 of 2010, dated 16.03.2023, till the disposal of this Criminal Appeal.



2. The case of the prosecution is that the petitioner accused was working as a Special Revenue Inspector, Taluk Supply Officer, Illuppur, Pudukkottai District, that the defacto complainant had approached the petitioner for issuance of family card, that the petitioner had demanded Rs.1,000/- as illegal gratification to initiate favourable report to the Taluk Supply Officer, Illuppur for issuance of family card and that at the request of the defacto complainant, the petitioner instructed him to give Rs.500/- at first and to give the balance Rs.500/- on 28.07.2009.

3. It is 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 28.07.2009 at 10.45 hours before the Vigilance and Anti-Corruption Police, Pudukkottai and on the basis of the complaint, FIR came to be registered in Crime No.04 of 2009 for the offence under Section 7 of Prevention of Corruption Act and a trap was organized and in pursuance of the trap plan, on the same day at about 17.25 hours, the defacto complainant along with official witnesses met the petitioner, that the petitioner had received Rs.500/- and kept the same in his right side rear pocket and 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 same were not proved positive and sodium carbonate solution was also tested on the hands of the petitioner and the wedding invitation in which the tainted money of Rs.500/- was kept.

4. The respondent police, after completing the investigation, has filed the final report for the offences under Sections 7, 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988 and the case was taken on file in Spl.C.C.No.01 of 2010 and the same was pending on the file of the Assistant Sessions Court (Chief Judicial Magistrate), Pudukkottai.

5. During trial, the prosecution has examined 14 witnesses as P.W.1 to P.W.14, exhibited 17 documents as Ex.P.1 to Ex.P.17 and marked 5 material objects as M.O.1 to M.O.5. The defence has adduced neither oral nor documentary evidence.

6. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 16.03.2023 convicting the petitioner for the offences under Sections 7 and 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.3,000/-, in default, to undergo 1 year Simple Imprisonment for the offence under Section 7 of Prevention of Corruption Act and sentenced him to undergo 5 years Rigorous Imprisonment and to pay a fine of Rs.3,000/-, in



default, to undergo 1 year Simple Imprisonment for the offence under Sections 13(2) r/w 13(1)(d) of Prevention of Corruption Act 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.

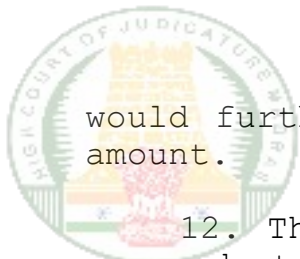
7. The learned counsel appearing for the petitioner would submit that the order of sanction has been passed by PA to District Collector, who is not having any competence to grant the sanction and that the said sanctioning authority, without applying her mind and without getting the necessary particulars, has mechanically granted the sanction order.

8. The learned counsel appearing for the petitioner would further submit that the petitioner has no right to issue the ration cards and the Taluk Supply Officer alone has jurisdiction to issue the ration cards and the petitioner's duty is only to verify whether the details furnished are correct or not, that the phenolphthalein test conducted in respect to the petitioner's hands were not positive and that though the prosecution has alleged that the tainted amount was kept in his pant pocket, the pant has neither been recovered nor subjected to phenolphthalein test. He would further submit that the trial has been commenced in 2010 and concluded on 10.03.2023 and the trial has been conducted for the period of 14 years, which violates the fundamental rights of the petitioner under Article 21 of the Constitution of India.

9. The learned Additional Public Prosecutor appearing for the respondent would submit that PA to District Collector is the appointing authority as per the Tamil Nadu Ministerial Service Rules (corrected up to 20th May, 2021) and that the post of Junior Assistant, Typist, Steno-Typist Grade-3, Telephone Operator, it has been shown as the Personal Assistant (General) to the District Collector is the appointing authority and that the sanctioning authority, after considering the materials available on record, has rightly granted sanction. He would further submit that the presence of the petitioner at that time on trap was proved by the prosecution through the evidence of P.W.4 and P.W.5, that the prosecution has established the demand, acceptance and recovery of tainted money from the petitioner and that the trial Court, considering the entire evidence available on record, has rightly convicted the petitioner.

10. According to the learned counsel appearing for the petitioner, the petitioner is aged 63 years and he has been facing the case for the past 14 years.

11. The learned counsel appearing for the petitioner would further submit that there are several infirmities in the prosecution case and further there are contradictions in material evidence between the evidence of the prosecution witnesses. He



would further submit that the petitioner has already paid the amount.

12. The learned Additional Public Prosecutor appearing for the respondent would further 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 on record.

14. The learned counsel appearing for the petitioner 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. Accordingly, this Criminal Miscellaneous Petition is allowed and 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 Assistant Sessions Judge (Chief Judicial Magistrate), Pudukkottai;

(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 trial Court once in a week i.e., on every Monday 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/-

26/06/2023

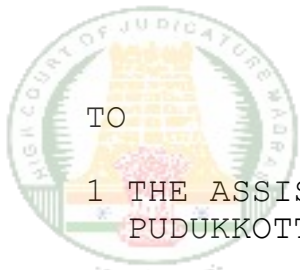
/ TRUE COPY /

27/06/2023

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

CSM

<https://www.mhc.tn.gov.in/judis>



TO

1 THE ASSISTANT SESSIONS JUDGE (CHIEF JUDICIAL MAGISTRATE),
PUDUKKOTTAI.

2 THE INSPECTOR OF POLICE, VIGILANCE AND ANTI CORRUPTION,
PUDUKKOTTAI, PUDUKKOTTAI DISTRICT.

3 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY DISTRICT.

4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.5563 of 2023
in
CRL A (MD) No.276 of 2023
Date :26/06/2023

RS/SSS/SAR-(27.06.2023) 5P 5C