



CRL MP(MD) No.10459 of 2023

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

Monday, the Twenty Fourth day of July Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.K. RAMAKRISHNAN

CRL MP(MD) No.10459 of 2023

in

CRL A(MD) No.583 of 2023

S.JOTHINDRA GEETH PRAKASH

... Petitioner / Appellant /
Accused No.1

Vs

STATE REPRESENTED BY
THE INSPECTOR OF POLICE
VIGILANCE AND ANTI CORRUPTION,
KANYAKUMARI DISTRICT AT NAGERCOIL.
(CRIME NO.4 OF 2007.)

... Respondent / Complainant

Criminal Miscellaneous 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 imposed on the Petitioner / Appellant / Accused No.1 in Spl.SC.No.4 of 2014 dt.28.6.2023 on the file of the Learned Special Judge cum Chief Judicial Magistrate,Kanyakumari District at Nagercoil.

Prayer in Crl A(MD) No.583 of 2023:

To call for the records relating to the judgment of conviction and sentence passed in Spl.S.C.No.4/2014 dated 28.06.2023 on the file of the learned Special Judge-Cum-Chief Judicial Magistrate, Kanyakumari District at Nagercoil and set aside the same against the appellant / accused No.1 and acquit him from the charges levelled against him.

Order : This Criminal Miscellaneous Petition coming up for orders on this day,
<https://www.mhc.tn.gov.in/judis>



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upon perusing the petition filed in support thereof and upon hearing the arguments of M/s.R.VENKATESWARAN, Advocate for the petitioner and of Mr.T.SENTHIL KUMAR, Additional Public Prosecutor on behalf of the Respondent, while admitting the Criminal Appeal, the court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed in Spl.S.C.No.4 of 2014, dated 28.06.2023, on the file of the learned Special Judge cum Chief Judicial Magistrate, Kanyakumari District at Nagercoil, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that the petitioner was working as District Adi Dravidar Welfare Officer in Kanyakumari District from 01.04.2004 to 10.06.2006. The second accused was working as Vice-President of Kovilpatti Carpentry and Blacksmithy Workers Co-op. Cottage Industrial Society Ltd., Pudukottai. The petitioner has issued a tender notification on 06.10.2005 for purchasing wooden furniture to the Kalingarajapuram Adi Dravidar Welfare High School to the tune of Rs.2,34,725/- and the last date for submitting the tender was on or before 31.10.2005. In view of the above tender notification, three Societies had submitted the tenders with quoted amount before the District Adi Dravidar Welfare Officer in Kanyakumari District. Even though, the second accused defunct society submitted the tender on 07.11.2005, the same was accepted is in violation of Tamil Nadu Transparency in Tenders Act, 1898. After finishing the work, during the course of check up, it was found that all the furniture has been made from Neem wood



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instead of Teak wood and it has been worth about only Rs.1,44,660/-. Thereby, the petitioner and the second accused made a loss of Rs.90,065/- to the exchequer of the Government.

3. On the basis of the complaint lodged by the defacto complainant, FIR came to be registered in Crime No.4 of 2013.

4. The respondent police, after completing the investigation, has laid a final report before the Special Judge cum Chief Judicial Magistrate, Kanyakumari District at Nagercoil, for the offences under Sections 120(B), 465, 466, 468, 471 of IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, and the same was taken on file in Spl.S.C.No.4 of 2014.

5. During the trial, on the side of the prosecution, 22 witnesses were examined as P.W.1 to P.W.22 and 59 documents were marked as Ex.P.1 to Ex.P.59. On the side of the accused, no one was examined and 3 documents were marked as Ex.D1 to Ex.D3.

6. The learned Sessions Judge, upon considering the evidences adduced and on hearing the arguments on both the sides, has passed the impugned judgment dated 28.06.2023 convicting the petitioner/accused for the offence under Sections 120(B), 465, 468 and 471 of IPC and Section 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988, and sentenced him to undergo 1 year Simple Imprisonment



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for each offence under Sections 120(B), 465, 468 and 471 of IPC and sentenced him to undergo 1 year Simple Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 2 months Simple Imprisonment for the offence under Section 13(2) r/w 13 (1)(d) of Prevention of Corruption Act, 1988. Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the above Miscellaneous Petition seeking suspension of sentence.

7. The learned counsel for the petitioner would submit that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses. He would further submit that the petitioner has already paid fine amount and he was granted suspension of sentence by the Trial Court till 28.07.2023.

8. 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.

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

10. In paragraph 104 of the order dated 28.06.2023, the learned Chief Judicial Magistrate found that the petitioner is suffering from various ailments viz.,

“104. While considering the nature and gravity of the offences



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committed by the accused A1 and A2, considering the fact that the accused A1 had committed misconduct during his tenure of service, A1 is not entitled for any leniency from this Court. But, all along the trial, due to his ailments the personal appearance of Accused A1 was dispensed by the Hon'ble High Court, Madras, Madurai Bench vide an order dated in Crl.MP(MD)No.2706 of 2016. Even today the Accused-A1 was brought to this Court by Wheel Chair and submitted that he had lost his eye sight due to the disease of Glaucoma and was suffering from other ailments mentioned above. Therefore, considering the age of the accused A1 and his ailments mentioned above as mitigating circumstance in the sentencing process, the accused A1 is sentenced to undergo one year of simple imprisonment for each offence committed U/S. 120(B), 465, 568,471 of IPC."

11. Apart from the above ailments, the learned counsel for the petitioner also pointed out that certain infirmities, inconsistencies and certain contradictions in material particulars of the witnesses, this Court prima facie feels that there are some arguable points involved in this criminal appeal. Further the criminal appeal is not likely to be taken up for final hearing in the near future. Hence, this Court is inclined



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to grant suspension of sentence alone to the petitioner.

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12. Accordingly, the relief of suspension of sentence 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 Special Judge cum Chief Judicial Magistrate, Kanyakumari District at Nagercoil;

(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) Considering the submission of the learned counsel for the petitioner that the petitioner has already been complying the condition as per order of this Court in Crl.MP(MD)Nos.4015 and 4016 of 2020 in Crl.A(MD)No.231 of 2020 dated 31.08.2020, the petitioner is not necessary to appear before the Court below.

sd/-
24/07/2023

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/08/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



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To

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1.The Special Judge-cum-Chief Judicial Magistrate,
Kanyakumari District at Nagercoil.

2.The Inspector of Police,
Vigilance and Anti Corruption,
Kanyakumari District at Nagercoil.

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

+1 CC to M/s.R.VENKATESWARAN, Advocate (SR-11173[I] dated 24/07/2023)

ORDER

IN

CRL MP(MD) No.10459 of 2023

in

CRL A(MD) No.583 of 2023

Date :24/07/2023

ED/VRS/SAR- (01/08/2023) 7P / 5C

Madurai Bench of Madras High Court is issuing certified copies in this format from
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