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Crl. O.P. Nos.7145 and 2591 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.09.2024

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.OP.Nos.7145 and 2591 of 2024
and
Crl.MP.Nos.5191 and 1889 of 2024

1.Nishanthan
2. Nimalan

.. Petitioners
(in Crl.OP.No.7145 of 2024)

1. Harikaran
2. Surendiran
3. Piranavan

.. Petitioners
(in Crl.OP.No.2159 of 2024)

(Presently all are detained at
Special Refugee Camp,
Trichy)

Vs.

The State represented by
The Deputy Superintendent of Police,
Q Branch CID, Chennai-600 004.

.. Respondent
(in both Crl.OPs)

Common Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C r/w 265G of Cr.P.C, to call for the records in Crl.MP.No.13618 of 2023 in C.C.No.9007 of 2022 on the file of learned II Metropolitan Magistrate Court, Egmore, Chennai and set aside the order dated 26.10.2023 in Crl.MP.No.13618 in C.C.No.9007/2002 on the file of learned II Metropolitan Magistrate Court, Egmore, Chennai.



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Crl.OP.No.7145 of 2024

For Petitioners : Mr.R.Vivekananthan
for Mr.P.Pugalenth

For Respondents : Mr.S.Udaya Kumar
Government Advocate (Crl.Side)

Crl.OP.No.2591 of 2024

For Petitioners : Mr.R.Vivekananthan

For Respondents : Mr.S.Udaya Kumar
Government Advocate (Crl.Side)

COMMON ORDER

The petitioners are accused in C.C.No.9007 of 2022 on the file of II Metropolitan Magistrate, Egmore, Chennai. They are facing trial along other accused for offence under Sections 120b, 419, 420, 465, 467, 468, 471, 109 of IPC and Sections 12(1)(b), 12(1)(A)(a) 12(2) of Passport Act, 1967 and Section 14(c) of Foreigners Act, 1946.

2. The major offence under Section 12(1)(A)(a) of Passport Act, 1967, wherein the minimum sentence prescribed as one year and its' may extend to five years with fine which shall not be less than Rs.10,000/- , but which may extend to Rs.50,000/-.



3. The rest of the offences are punishable maximum extent, not more than seven years. Therefore, the petitioners are entitled to have the benefit of plea bargain. Therefore, they have made an application for considering their plea and pass appropriate order.

4. The learned Judicial Magistrate has proceeded to arrive at mutual satisfactory disposition following the provisions of the Code. Meeting convened by the Court among stake holders regarding the sentence unfortunately could not fructify. Therefore, the petitioners are before this Court seeking interference of this Court to set aside the order passed by the trial Court and pass appropriate order on their application for plea bargaining.

5. The learned counsel appearing for the petitioners submits that the reasons for dismissal of the plea bargain application is due to improper understanding of Section 265E of the Code. The act prescribes imposition of $\frac{1}{2}$ of the minimum sentence prescribed for the offence if the minimum sentence is prescribed. It has been wrongly understood as $\frac{1}{2}$ the maximum punishment prescribed. In case the punishment prescribed for a term extend up to seven years. Without prescribing minimum sentence, then the sentence of imprisonment shall not exceed $\frac{1}{4}^{\text{th}}$ of the maximum period prescribed whereas in this case the court has



wrongly understood the $\frac{1}{4}$ th sentence must be of maximum sentence.

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6. The learned Government Advocate (Crl.Side) appearing for the respondent police submits that the accused has to undergo minimum sentence prescribed for offence 12(1)(A) of Passport Act, 1967 prescribes which is 1 year and extendable upto five years imprisonment. That apart, submitted that the confinement of the petitioners in the special camp will not be taken into account for imprisonment and therefore, they have to undergo imprisonment in prison.

7. The counsel for the petitioner, conceding the second point that the petitioners are ready to undergo imprisonment in a prison subject to set off of the period already undergone. The trial Court's contention that the petitioners have to undergo minimum sentence of one year and three months in the given circumstances is not proper and requires clarification.

8. The learned Government Advocate (Crl.Side) submits that these petitioners are Srilankan Nationals and they have over stayed in violation of Passport Act. Therefore, they are confined as inmates of the special camp at Trichy. The minimum sentence prescribed under the statute cannot be flouted even in case of plea bargain.



9. The anxious consideration given to the rival submissions made by counsels and the reasoning given by the trial Court to dismiss the plea bargain. This Court make it clear that Section 265E of the Code, never mandates that in case of plea bargain, imprisonment to be imposed in all cases. Only when minimum sentences is prescribes for offence, the section mandates that imprisonment shall be not less than 50% of the minimum sentence prescribed. In other cases, it shall be upto 1/4th of the sentence imposed. This Court in an earlier occasion had made this point clear in ***G.Venkateshan Vs. State and Another.***

10. In the case in hand except Section 12(1)(A) of the Passport Act. for all other offence, the imprisonment prescribed is only maximum sentence. Therefore, in MSD the sentence may be any where between the imprisonment till arising of the Court to 1/4th of the maximum sentence prescribed for other offences and for offence under Section 12(1)(A) of Passport Act. It is necessary that a minimum sentence of 6 months (ie 50% of the minimum sentence of 1 year) has to be imposed.

11. For clarity, it is appropriate to extract the order of this Court in Crl.OP.No.14485 of 2024 dated 07.08.2024 (*Mr.G.Venkateshan Vs. The State Rep by, The Inspector of Police, Keevalur Police Station, Nagapattinam*) in Paragraph.No.29 is here under.



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“29. It is appropriate for this Court at this juncture to clarify that, the offenders who apply for plea bargaining and go through the process of Mutually Satisfactory Disposition need not apprehend that he will be certainly imposed with sentence of imprisonment. The Act prescribes half the sentence of imprisonment in case of the offence where minimum sentence is prescribed. In all other cases where the sentence of imprisonment is extendable to a certain period, then the Court may not impose sentence of imprisonment, if the sentence prescribed for the said offence is ' may be imprisonment or with fine'. The imprisonment, may be till Raising of the Court to the maximum of 1/4th period prescribed under the Act.

12. A perusal of the impugned order indicates that the contention of the Additional Public Prosecutor that the petitioner has to undergo minimum sentence of one year and three months been accepted by the trial Court due to improper interpretation of Section 265E of the Code. Therefore, the said error been pointed and clarified as above.

13. The petitioners having been in camp for more than four years and seven months and had expressed their intention to go back to their motherland, this Court is of the view that it is appropriate to set aside



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the order of the trial court passed in the plea bargain application, pointing out the error and clarifying the legal position as far as Section 265E of the Criminal Procedure Code concern and remanded back to the matter to the learned Judicial Magistrate to re-consider afresh, the sentence to be imposed and pass appropriate order in accordance with law.

14. The Judicial Magistrate shall preferably disposed of this application within a period of two months from the date of receipt of this order. With this observation, these Criminal Original Petitions are disposed of. Consequently, the connected miscellaneous petitions are closed.

09.09.2024

Vv

To

1. The II Metropolitan Magistrate Court,
Egmore, Chennai.
2. The Deputy Superintendent of Police,
Q Branch CID, Chennai-600 004.
3. The Public Prosecutor,
High Court of Madras.



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Dr.G.JAYACHANDRAN,J.

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