



CRL MP(MD) No.2874 of 2024

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

Thursday, the Seventh day of March Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice VIVEK KUMAR SINGH

CRL MP(MD) No.2874 of 2024

in

CRL A(MD) No.195 of 2024

THOMAS @ THOMAS FERNANSHA

... PETITIONER/ APPELLANT

Vs

**THE INSPECTOR OF POLICE
VIGILANCE AND ANTI CORRUPTION UNIT,
THANJAVUR,
THANJAVUR DISTRICT.
CRIME NO.11/2016.**

... RESPONDENT/RESPONDENT

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to enlarge the Petitioner on bail by Suspending the Sentence imposed upon him in Special Case No.05/2017 on the file of the Learned Special Judge for Corruption Cases/Chief Judicial Magistrate, Thanjavur at Kumbakonam, Thanjavur District, by Judgment dated 27.02.2024 pending disposal of the main Criminal Appeal.

Prayer in CRL.A(MD).195/2024:

Pleased to call for the records in Special Case No.05 of 2017 on the file of the Learned Special Judge for Corruption Cases / Chief Judicial Magistrate, Thanjavur at Kumbakonam, Thanjavur District, and set aside the Judgment dated 27.02.2024 and Acquit the Accused / Appellant on the charges.



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Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.K.M.KARUNAKARAN, Advocate for the petitioner and of Mr.M.MUTHUMANIKKAM, Government Advocate(crl.side) on behalf of the Respondent, While admitting the Criminal Appeal, the court made the following order:-

The petitioner has filed this Criminal Miscellaneous Petition praying to suspend the sentence passed against him by the learned Special Judge, Special Court for Prevention of Corruption / the Chief Judicial Magistrate Court, Thanjavur at Kumbakonam, in Spl.S.C.No.5 of 2017 dated 27.02.2024 and to enlarge him on bail, pending disposal of the Criminal Appeal.

2. It is the case of the prosecution that the petitioner/accused was serving as Sanitary Inspector at VII Division, Chinna Aspathiri Valagam, Manambusavadi, Thanjavur and P.W.2 has submitted a petition to obtain the "Non-availability Certificate" for the death of his mother Kalaiselvi, who died on 06.11.2008. In this regard, an application was presented before the Municipal Corporation on 19.05.2016 which was forwarded to the petitioner herein. The main allegation of the prosecution is that on 27.08.2016, when P.W.2 met the petitioner/accused in his office, he demanded a sum of Rs.2,000/- as illegal gratification. Thereafter, he was caught in the trap laid by the respondent police. The Trial Court convicted him for the offence under Section 7 and 13 (2) read with 13(1)(d) of the Prevention of Corruption Act,



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1988 and sentenced him to undergo 3 years R.I and to pay a fine of Rs.3000/- in default six months S.I for the offence under section 7 of P.C Act. To undergo one year R.I and to pay fine of Rs.3,000/- in default, six months S.I for the offence under section 13(2) read with 13(1)(d) of PC Act,1988 and directed the sentences to run concurrently. Challenging the above said conviction and sentence, the petitioner has preferred the present Criminal Appeal along with the Miscellaneous Petition seeking suspension of sentence.

3. Learned counsel for the petitioner submitted that the main grievance of P.W.2 was that his file is said to have been kept pending by the corporation officials for a long period without any progress, which triggered him to file a complaint. It can be ascertained in the testimony of P.W.2 that there is no legal evidence to prove the initial demand made by the petitioner and this being so, the prosecution had failed to prove the factum of demand through legal evidence. Furthermore, there is a contradiction in the testimony of P.W.4, who is alleged to have been present at the time of trap. The contradictions in the evidence of P.W.3 and P.W.4 coupled with the fact that P.W.2 turned hostile would bound to reflect on the credibility of the prosecution case. Hence, the learned counsel prays for suspension of sentence of the petitioner.

4. The learned Additional Public Prosecutor appearing for the respondent



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submitted that the trial Court has already suspended the sentence for a limited period of one month.

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5. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State and perused the materials available on record.

6. Considering the facts and circumstances of the case, without expressing any opinion on merits of the case, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

7. Accordingly, this Criminal Miscellaneous Petition is allowed. The sentence imposed by the learned Special Judge, Special Court for Prevention of Corruption / the Chief Judicial Magistrate Court, Thanjavur at Kumbakonam, in Spl.S.C.No.5 of 2017 dated 27.02.2024 alone is suspended, subject to the following conditions:-

i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two blood sureties each for a like sum to the satisfaction of the learned Special Judge, Special Court for Prevention of Corruption / the Chief Judicial Magistrate Court, Thanjavur at Kumbakonam;

ii) The sureties shall affix their photographs and Left Thumb



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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;

iii) The petitioner shall appear before the concerned Court on the first working day of every English calendar month at 10.30 a.m., until further orders.

iv) The petitioner shall furnish his residential address and mobile number to the Trial Court ie., learned Special Judge, Special Court for Prevention of Corruption / the Chief Judicial Magistrate Court, Thanjavur at Kumbakonam.

8. Subject to the above conditions, this Criminal Miscellaneous Petition is allowed.

sd/-
07/03/2024

/ TRUE COPY /

/03/2024
Sub-Assistant Registrar
(C.S. I / II / III / IV)
Madurai Bench of Madras High Court,
Madurai - 625 023.

PKN
TO
1 THE SPECIAL JUDGE,
SPECIAL COURT FOR PREVENTION OF CORRUPTION /
THE CHIEF JUDICIAL MAGISTRATE,
THANJAVUR AT KUMBAKONAM.



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

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

COPY TO:

THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.(CALL FOR RECORDS)

+1 CC to M/s.K.M.KARUNAKARAN, Advocate (SR-2882[I] dated 07/03/2024)

ORDER IN
CRL MP(MD) No.2874 of 2024
Date :07/03/2024

SA/GS/SAR. /13.03.2024/6P/6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023.