



CRL MP(MD) No.12169 of 2024

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

Tuesday, the Nineteenth day of November Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice M.NIRMAL KUMAR

CrI.M.P(MD).No.12169 of 2024

in

CrI.A(MD).No.976 of 2024

S.SENGUTTUVAN

... Appellant / Sole Accused

Vs

THE STATE OF TAMIL NADU

REP BY THE INSPECTOR OF POLICE, VIGILANCE

AND ANTI CORRUPTION, SIVAGANGAI DISTRICT.

CRIME NO. 10/2010

... 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 in Spl C.C no. 59/2014 dt. 07.10.2024 by the learned Special Judge for Trial of cases under the prevention of corruption act, Sivagangai and enlarge the petitioner on bail pending disposal of the main criminal appeal

Prayer in CRL A(MD). 976/ 2024 :

To call fo the records and set aside the conviction and sentence passed in Spl C.C no. 59/2014 dt. 07.10.2024 by the learned Special Judge for Trial of cases under the prevention of corruption act, Sivagangai.

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 M/s.V.MUTHU KAMATCHI, Advocate for the petitioner and of M/s.A.THIRUVADI KUMAR, Additional Public Prosecutor on behalf of the



CRL MP(MD) No.12169 of 2024

Respondents the court made the following order:-

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The petitioner/sole accused in Spl.C.C.No.59 of 2014 was convicted by the learned Special Judge for Trial of Cases Under the Prevention of Corruption Act, Sivagangai by judgment dated 07.10.2024 for the offences punishable under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act and sentenced to undergo 6 years Rigorous imprisonment each under the aforesaid Sections and to pay fine of Rs.5,000/- in default to undergo Simple Imprisonment for 3 months each under the aforesaid Sections and the sentences were ordered to run concurrently. Against which, this petition has been filed seeking for suspension of sentence.

2. The case against the petitioner is that when he was serving as Inspector of Police at Kalaiyar Kovil Police Station, Sivagangai District, from 16.02.2009 to 02.07.2010, he had demanded bribe amount from one Anbumalaikannan @ Sadhu Mangala Swamiji/defacto complainant, who was practicing Siddha Medicine and his grand-daughter, namely, Navabharathy. Both of them had been to Kalaiyar Kovil Police Station on 17.06.2010 and lodged a complaint against the husband of Navabharathy, namely, Sukumar, who had taken the defacto complainant's Motor Cycle, after having beaten Navabharathy and her brother. The same was registered in CSR.No.426/2010, however, no case was filed and no action taken against the said Sukumar and also no steps taken to recover the motor cycle. On 29.06.2010, case in



CRL MP(MD) No.12169 of 2024

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Crime No.136/2010 was registered for the offence under Sections 294(b), 323 and 379 (Non Habitual) of IPC against the accused and the vehicle was also seized. When the defacto complainant has requested the accused to return the motor cycle, he demanded bribe of Rs.3,000/- as illegal gratification to return the vehicle and thereafter, the demand was reduced to Rs.2,000/-. In this regard, the defacto complainant lodged complaint before the Inspector of Police, Vigilance and Anti Corruption, Sivagangai Detachment and the case was registered against the accused in Crime No.10 of 2010 for the offence under Section 7 of Prevention of Corruption Act, 1988. Thereafter, on 02.07.2010, at about 06.30 pm., trap was laid and trap was also successful and the accused herein was caught red handed receiving the bribe amount of Rs.2,000/- as illegal gratification from the defacto complainant. Thereafter, on confirming the accused receiving the bribe amount, he was arrested and investigation was conducted. On completion of investigation, charge sheet was laid. During trial, on the side of the prosecution, 18 witnesses were examined and 42 exhibits were marked and P.M.O.1 to P.M.O.5 were also marked. On the side of the defence, Ex.D1 marked through P.W.5.

3. The contention of the petitioner/accused in this case is that the defacto complainant prior to the trial had passed away and hence, there is no evidence to prove that there was any demand made by the petitioner. P.W.5, grand-daughter of



CRL MP(MD) No.12169 of 2024

the defacto complainant, had not spoken about any demand made by the petitioner.

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It is the one of the condition to prove the case under Prevention of Corruption Act is that there must be demand acceptance and recovery, in this case, demand not proved. Further, P.W.9, Sub-Inspector of Police and P.W.11, Head Constable had clearly stated that at the time of alleged demand, the petitioner was ge;Njhg];J duty, which has not been seriously disputed. Hence, in this case, demand not proved. The explanation given by the petitioner is that for the transportation of the motor cycle, which was seized in Crime No.136 of 2010, transportation charges was paid and it has been projected as if the petitioner had received the bribe amount. The trial Court relied upon the judgment of Neeraj Dutta Vs., State (Govt.of N.C.T of Delhi) 2022 Live Law (SC) 1029, wherein it is held that in the event of death of the defacto complainant, with attendance circumstances and evidence, the trial Court can proceed against the accused in a trap case, is not applicable to the facts and circumstances of this case. In this case, P.W.2 accompany witness and P.W.4 the other witness for the trap proceedings are giving contradict version. Their evidence cannot be relied upon. He further submitted that there were materials contradictions in the evidence of P.W.10, 11, 12, 17 and 18, but the trial Court had not considered the same. The trial Court finding that in this case P.W.2 does not derive any benefit, is not proper. P.W.5 is none other than the grand-daughter of defacto complainant,



CRL MP(MD) No.12169 of 2024

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who had difference of opinion with her husband Sukumar and not satisfied with the manner in which the petitioner conducted the investigation against said Sukumar and hence, she is a motivated witness. These facts has not been considered by the trial Court. Further, infact the petitioner convicted under Section 7 of the Prevention of Corruption Act, which is not proper. The enhanced punishment would not apply. Hence, the trial Court convicting the petitioner under Section 7 is not proper. Further submitted that in this case, once the trap turned successful, the charge against Section 7 cannot be maintained and charge under Section 13(2) r/w 13(1)(d) is sufficient and convicting the petitioner for both charges is not proper.

4. The learned Additional Public Prosecutor on the other hand opposed the contention of the petitioner and submitted that the petitioner, who was the Inspector of Police attached Kaliyar Kovil Police Station, for conducting investigation in a case, he demanded bribe money from the defacto complainant. Initially, CSR assigned and after constant persuasion, FIR registered. After registration of FIR, he seized the vehicle from Sukumar, who is the estranged husband of the defacto complainant's grand-daughter(P.W.5). But, the vehicle not handed over, detained in the police station. For returning the vehicle, illegal gratification of Rs.3,000/- was demanded by the petitioner/accused, thereafter, it was reduced to Rs.2,000/-. The defacto complainant not willing to pay the bribe amount, lodged a complaint with the



CRL MP(MD) No.12169 of 2024

WEB COPY

vigilance, who registered an FIR in Crime No.10 of 2010. The defacto complainant along with P.W.2 were summoned to the vigilance office, trap proceedings was explained and thereafter, trap was laid. The petitioner was caught red handed receiving bribe amount of Rs.2,000/-. On confirming the petitioner receiving the bribe amount, he was arrested, amount recovered. On conclusion of investigation, charge sheet laid. During trial, on the side of prosecution as many as 18 witnesses as P.W.1 to P.W.18 were examined and 42 documents were marked as Exs.P1 to Exs.P42, besides P.M.O.1 to P.M.O.5 were adduced to prove the guilt of the accused. In this case, charge sheet was framed on 21.11.2012, but due to work load of the Court, witnesses could not be examined and the first witness examined on 15.09.2016. In the meanwhile, the defacto complainant had passed away. The Hon'ble Apex Court in the case of Neeraj Dutta Vs., State (Govt.of N.C.T of Delhi) 2022 Live Law (SC) 1029, wherein it was held that even in the absence of defacto complainant, case can proceed with and the trial Court considering the attendance circumstances. In this case, the trial Court had rightly considered the attendance circumstances and found that the trap was successful, money has been recovered from the petitioner and the petitioner was unable to give any proper explanation and probabalise his defence and rightly convicted the accused. Further, he fairly submitted that convicting the petitioner under Section 7 for seven years may not be correct. The petitioner after his



CRL MP(MD) No.12169 of 2024

conviction, he is in prison for more than 42 days.

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5. Heard both sides and perused the materials available on record.

6. The decoy witness died, could not be examined, P.W.2 is the accompanying witness, P.W.5, grand-daughter of decoy, her evidence is contradictory. Further, the petitioner even at the time of trap gave explanation, how the money has been thrust and wrongly projected as the trap amount, but the same not considered by the trial Court. Considering the facts and circumstances of the case, finding prima facie case is made out, this Court is inclined to entertain this petition and to suspend the sentence imposed against the petitioner. Accordingly, this Criminal Miscellaneous Petition is ordered and the imprisonment ordered by the trial Court through the impugned judgment, dated 07.10.2024 is suspended subject to the following conditions:-

i. The petitioner is directed to be enlarged on bail on their executing a bond for Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like sum to the satisfaction of the Special Court for trial of cases under the Prevention of Corruption Act, Sivagangai;

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 passbook to ensure their identity;



CRL MP(MD) No.12169 of 2024

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iii. The petitioner shall sign before the Special Court for trial of cases under the Prevention of Corruption Act, Sivagangai, on the first working day of every English Calendar month once in three month at 10.30 AM until further orders;

sd/-
19/11/2024

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20 / 11 / 2024

Sub-Assistant Registrar
Madurai Bench of Madras High Court,
Madurai - 625 023.

RMK

TO

1 THE SPECIAL JUDGE FOR TRIAL OF CASES UNDER
THE PREVENTION OF CORRUPTION ACT,
SIVAGANGAI

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

3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.

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

+1. C.C. to V.MUTHU KAMATCHI Advocate SR.No.14210 (I) dated 19/11/2024



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CRL MP(MD) No.12169 of 2024

ORDER
IN
Crl.M.P(MD).No.12169 of 2024
in
Crl.A(MD).No.976 of 2024
Date :19/11/2024

PSP/ /SAR /20.11.2024/ 9P/ 6C

Madurai Bench of Madras High Court is issuing certified
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