



CRL MP(MD) No.15580 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Wednesday, the Tenth day of January Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.15580 of 2023

IN

CRL A(MD) No.983 of 2023

S.ELANGO VAN

... PETITIONER/ APPELLANT

Vs

THE INSPECTOR OF POLICE
VIGILANCE AND ANTI-CORRUPTION WING,
TIRUCHIRAPPALLI.
CR.NO.35/2008

... 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 Suspend the sentence imposed by the Learned Special Judge Special Court for Trial of Cases under Prevention of Corruption Act Tiruchirappalli in Spl C.C.No.40/2011 dt 13.10.2023 pending disposal of the main appeal and release the petitioner on bail.

Prayer in CRL A(MD).983/2023 :

To allow this appeal and acquit the appellant from the charges by setting aside the impugned Judgment passed by the Learned Special Judge, Special Court for Trial Cases under Prevention of Corruption Act, Tiruchirappalli in Spl.C.C.No.40 of 2011 dated 13.10.2023.



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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.C.ARULVADIVEL @ SEKAR, Senior Counsel for M/S.ARULVADIVEL ASSOCIATES for the petitioner and of MR.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

Reserved on : 30.11.2023

Pronounced on : 10.01.2024

The petitioner has filed this petition to suspend the sentence imposed against him by the learned Special Judge for trial of cases under the Prevention of Corruption Act, Tiruchirappalli in Special C.C.No.40 of 2011 by judgment dated 13.10.2023 and to enlarge him on bail pending disposal of criminal appeal.

2.The brief facts of the prosecution case:

The petitioner/accused was working as Chief Inspector of Factories, Chepauk, Chennai from 21.11.2007 to 12.12.2008. One Mr.S.Vijay was working as graduate engineer trainee in Strelite Industries Limited, Thooththukudi and was doing work at Sulphuric Acid Plant and on 19.11.2008 while he was checking pipe line, he was amidst of collapsed cool water tower and he was died during treatment. The matter was informed to Chief Inspector of Factors by Mr.A.Sargunam, General Manager. Then the Deputy Chief Inspector of Factories, Thooththukudi visited the factory and issued prohibitory order not to operate the cooling water tank and instructed to operate only after getting order from the Chief Inspector of Factories. Afterwards, on



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10.12.2008 the General Manager Mr.Sargunam contacted the accused over phone and the accused demanded Rs.5 lakhs as gratification for issuing termination of prohibitory order and after few conversation, asked the General Manager Mr.Sargunam to come Trichy on 12.12.2008 and 13.12.2008. In pursuance of demand, on 12.12.2008 night at Room No.315, Femina Hotel, Trichy where the accused was staying the said Mr.Sargunam met him and gave Rs.2,00,000/- to the accused between 23.45 hours and 00.30 hours in the presence of witness Joseph Peeris, General Manager(Human Resoures). Then the accused caught red handed by the P.W.12 DSP and his associates. Then P.W.13 investigated the case and laid charge sheet against the accused for the offence under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The petitioner was charged for the offence under Section 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act.

3. To prove the charge the prosecution examined 13 witnesses as P.W.1 to P.W.13 and marked 35 exhibits as Ex.P1 to Ex.P35 and M.O.1 & M.O.2 were marked. No witness was examined and no document was marked on accused side.

4. After considering both sides evidences and both side arguments, the Trial Court has found the petitioner guilty for the offence under Section 7 and 13(2) r/w 13(1) (d) of P.C.Act 1988 and convicted and sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.10,000/-, in default, to



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undergo simple imprisonment for a period of six months and for the offence under Section 7 of P.C.Act and sentenced to undergo rigorous imprisonment for a period of 7 years and to pay fine of Rs.20,000/-, in default, to undergo rigorous imprisonment for a period of 6 months for the offence under Section 13(2) r/w 13(1)(d) of P.C.Act, 1998 and directing the sentences to concurrently by passing impugned judgment dated 13.10.2023.

5. Aggrieved by the conviction judgment, the petitioner preferred the present criminal appeal before this Court. Along with appeal, the petitioner filed this Criminal Miscellaneous Petition seeking for suspension of sentence and for bail pending disposal of the appeal.

6. Heard both sides and perused the records in this Criminal Miscellaneous Petition.

7. The learned counsel for the petitioner has submitted that the petitioner was working as Chief Inspector of Factories, Chepauk, Chennai. It is the case of the investigating agency that at the occurrence time the petitioner/accused was received illegal gratification. It is not a case of regular trap. It is alleged that the petitioner/accused demanded Rs.5 lakhs for issuing termination of prohibitory order not to operate cooling water tank in the factory in question as one Vijay was died who collapsed amidst of cool water tower. As per evidence of P.W.3/Mr.Sargunam



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and P.W.11/ Mr.Joseph Peeris, they are bribe givers and accomplice, who abetted the offence. So, the accomplice of the accused cannot be examined as prosecution witnesses before tendering pardon on application. In this case tender of pardon was not obtained for P.W.3 and P.W.11 and so their evidence is unworthy of credit in the absence of corroboration of material particulars. The trial Court has not followed the procedure for the offence under Section 306 of Cr.P.C. and therefore the proceeding initiated by the trial Court is bad in law. In this case, it is stated that the P.W.12/Deputy Superintendent of Police was informed by one Balakrishnan about the alleged event of illegal gratification to be received by the petitioner/accused from P.W.3 and P.W.11. but, the said Balakrishnan was not examined. When the said material witness Balakrishnan was not examined an adverse inference has to be drawn against the prosecution case. The non-examination of informant creates serious doubt on the prosecution case. Moreover, the employees of the said Hotel were not examined as prosecution witnesses by the prosecution agency.

8. The learned counsel for the petitioner further submitted that except the evidence of P.W.3, P.W.11 and P.W.12, there was no independent witness examined to prove the prosecution case. P.W.12 deposed about counting of money whereas P.W.3 did not speak anything about the same. It is the case of the prosecution that P.W.3 brought Rs.5 lakhs in green bag, but only Rs.2 lakhs was recovered and the rest



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of Rs.3 lakhs is silent by the prosecution agency. On the prosecution side, there was no explanation regarding the remaining Rs.3 lakhs. In the case it is stated that the P.W.3 offered to give bribe on demand of accused. So, the offer by the bribe giver and the demand of accused respectively have to be proved by prosecution as a fact in issue. Mere alleged acceptance or receipt of illegal gratification without anything more would not make it offence under Section 7 of the P.C.Act. Moreover, the demand of gratification was not proved by the prosecution agency. It is stated that the bribe giver accepted the demand and tendered the demanded amount, which is case of obtainment and in such circumstances, the demand of gratification and its acceptance must be proved beyond reasonable doubt. There is no material available on record to attract the alleged offences. The trial Court has not properly appreciated the above aspects and merely given a formal conviction judgment.

9. The learned counsel for the petitioner would further submit that the he petitioner is now aged 72 years and he is suffering Type-II diabetic, hypertension and he has also complaints of breathing difficulty and fluctuating sugar level and he is need of regular health support and treatment. The prison doctor issued s certificate about the health condition of the petitioner. The petitioner is in prison from the date of judgment. Moreover, the appeal has been taken on file by this Court and it would get further time for disposal and the Hon'ble Supreme Court held that if the Court is



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not in a position to hear the appeal within a reasonable period, the accused be released on bail. The petitioner has a fair chance of succeed in appeal. Therefore, the learned counsel for the petitioner prays for suspension of sentence and bail for the petitioner.

10. In support of his above contentions, the learned counsel for the petitioner/accused relied on the following citations:

1. (1977) 4 SCC 291 (Kashmira Singh /v/ The State of Punjab)
2. (1999) 4 SCC 421 (Bhagwan Rama Shinde Gosai & Ors. /vs/ State of Gujaraj)
3. (2001) 6 SCC 145 (Takhaji Hiraji /v/ Thakore Kubesing Chamansing & Ors.)
4. (2001) 6 SCC 584 (K.C.Sareen /v/ CBI, Chandigarh)
5. (2009) 3 SCC 767 (Angana & another /v/ State of Rajasthan)
6. MANU/SC/0974/2017 (Bharat Gurjar & Ors. /v/ Stage of Rajasthan)
7. Order in Crl.A.(S) No.48/2019 by High Court of Jammu & Kashmir and Ladakh at Jammu (Ghulam Mustafa & Anr. /vs UT of J & K)
8. 2022 Live Law (SC) 1029, (Neeraj Dutta /v/ State (Govt. of



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N.C.T. of Delhi)

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9. 2023 SCC OnLine Chh 2451 (Shatrugan Lal Verma /v/ State of Madhya Pradesh)

11. Per contra, the Special Public Prosecutor would contend that the petitioner/accused was prosecuted after obtaining sanction, which was sanctioned by the sanctioning authority on independent application of mind. The evidence of P.W.3 and P.W.11 was properly appreciated by the trial Court. P.W.3 categorically deposed that the a accused instructed him to come to Trichy and bring Rs.5 lakhs. So based on demand made by the accused, P.W.3 along with P.W.11 came to Trichy and given the bribe amount of Rs.2 lakhs out of Rs.5 lakhs. The accused in 313 Cr.P.C. proceeding clearly admitted that the P.W.3 and P.W.11 were standing on opening of door and on enquiry the accused came to know about P.W.3 and P.W.11 and admitted Rs.2 lakhs brought by them. So, an admitted fact need not be proved. So, the P.W.3 and P.W.11 are not accomplice and umbrella of protection to bribe givers has to be given as per Section 24 of P.C.Act. Further, the accused has neither adduced any evidence nor disproved the fact P.W.3 and P.W.11 were accomplice. P.W.3 and P.W.11 are not accomplice. It is held by the Hon'ble Supreme Court that 'a person who offers a bribe merely as a part of a scheme to lay a trap is not accomplice since he was not a willing party to the payment of bribe but had a different object merely to



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entrap the accused. One Balakrishnan gave information to P.W.12 about the act of bribe. This was confirmed by P.W.10, so non-examination of informant is not fatal to the prosecution case.

12. The learned Special Public Prosecutor further submitted that the prosecution clearly proved about occurrence place and the same was admitted by the accused during 313 Cr.P.C. proceedings. So there is no necessity to examine the staff of the Femina Hotel and it will not prejudice the prosecution case. P.W.3 gave a statement before P.W.2/Village Administrative Officer, who corroborated the same. The Village Administrative Officer is competent to record the statement of a witness. Mere some minor contradictions in evidence, the entire evidence of prosecution witnesses cannot be brushed aside and disbelieve. It is a settled principle that if the demand emanated from the mouth of the accused and accepted by the accused is called obtainment and attracts Section 13(d) of P.C.Act. In this case, the prosecution clearly proved that the accused demanded Rs.5 lakhs and accepted Rs.2 lakhs from P.W.3. it is held by the Hon'ble Supreme Court in catena decisions that the offence committed under P.C.Act is grave crime and the offence should be viewed strictly and seriously. This Court held that bribe is a cancer to public services and corruption of corroding and it should be dealt with serious than the murder case. The petitioner was given treatment by the prison medical officers and there is also medical facilities available in the prison.



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Mere medical ground no one escape from the sentence awarded in corruption cases.

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The petitioner is in prison only for two months and the age of the accused is not criteria while implementing conviction awarded in corruption cases. The Trial Court has rightly appreciated the evidence and correctly passed the judgment convicting the accused as stated therein. Therefore, he strongly opposed to grant suspension of sentence and bail.

13. In support of his argument, the learned Special Public Prosecutor has relied on the following citations:

1. Judgement of this Court passed in Crl.A(MD)No.201 of 2017 dt:
27.07.2023

2. Judgement of this Court passed in Crl.O.P.(MD) No.8417 of 2023
dt:17.07.2023

3. Order of this court passed in Crl.M.P..(MD) No.6687 of 2022 in
Crl.A(MD) No.377 of 2022 dt: 28.06.2022.

4. (2023) 6 Supreme Court Cases 123 (Omprakash Sahni Vs. Jai
Shankar Chaudhary and Anr.)

5. Order of the Hon'ble Supreme Court passed in SLA (Crl)
No.13929 of 2023 (V.Senthil Balaji Vs. The Deputy Director, Ministry of
Finance Chennai)



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14. On hearing both side rival arguments and on perusal of records, it is clear that the petitioner was working as Chief Inspector of Factories, Chennai. While a trainee engineer was died upon collapse of cooling water tower at Sulphuric Acid Plant in Sterlite Industries Limited, Thooththukudi, prohibition order was issued by the Deputy Chief Inspector of Factories. It is alleged that the petitioner/accused demanded Rs.5 lakhs to pass termination order of prohibitory order and accepted Rs.2 lakhs. The amount was recovered from the room where the petitioner and P.W.3 and P.W.11 were present and this was not disputed or disproved. The petitioner/accused merely states that the P.W.3 and P.W.11 are accomplices and hence their evidence could not be accepted. On perusal of citations relied on by both sides, the trial Court has passed conviction against the petitioner in a corruption case, which cannot be dealt with as like other offences as it is settled that the corruption should be viewed strictly and seriously. The arguments of petitioner are points to be decided only at the time of disposal of the criminal appeal. The citations relied on by both sides are also to be considered at the time of disposal of the main criminal appeal and not at this stage. The petitioner is in prison only from 13.10.2023.

15. Therefore, considering the gravity of offence and also taking not short period of incarceration period, this court is not inclined to suspend the sentence at this point of time.



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16. In the result, this Criminal Miscellaneous Petition is dismissed.

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

VSD

TO

1 THE SPECIAL JUDGE, SPECIAL COURT FOR TRIAL CASES UNDER
PREVENTION OF CORRUPTION ACT, TIRUCHIRAPPALLI.

2 THE INSPECTOR OF POLICE

VIGILANCE AND ANTI-CORRUPTION WING, TIRUCHIRAPPALLI.

3 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.

4 THE ADDITIONAL PUBLIC PROSECUTOR,

MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.C.ARUL VADIVEL ASSOCIATES, Advocate (SR-477[I] dated
10/01/2024)

ORDER IN
CRL MP(MD) No.15580 of 2023
IN CRL A(MD) No.983 of 2023
Date :10/01/2024

RS/JGB/SAR-(11.01.2024) 12P 6C

Madurai Bench of Madras High Court is issuing
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