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CRL.M.P.NO.1145 OF 2023
IN CRL.A.NO.909 OF 2022

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M.SUNDAR, J.
AND
R.SAKTHIVEL, J.

(Order of the Court was made by M.SUNDAR, J.)

Captioned 'Criminal Miscellaneous Petition' ['Crl. M.P' for the sake of brevity] has been filed in this Court under Section 389(1) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C' for the sake of brevity and clarity] with a prayer to suspend the Life Sentence handed down by 'III Additional District and Sessions Court, Cuddalore at Vridhachalam' [hereinafter 'trial court' for the sake of brevity, convenience and clarity] vide S.C.No.93 of 2020 in which conviction and sentence after full trial was pronounced on 30.06.2022. This judgment of conviction and sentence shall hereinafter be referred to as 'impugned judgment' for the sake of brevity, convenience and clarity.



CRL.M.P.NO.1145 OF 2023
IN CRL.A.NO.909 OF 2022

2.The petitioner who is A1 in trial court has been sentenced to pay Rs.1,000/- fine and one month imprisonment in the event of non-payment of fine vide Section 294(b) of 'Indian Penal Code, 1860 (Act 45 of 1860)' ['IPC' for brevity] and Life Sentence and Rs.5,000/- fine with default clause of three months imprisonment in the event of non-payment of fine vide Section 302 of IPC.

3.The prosecution case which was believed by the trial court is an occurrence on 14.03.2020 wherein a neighbour of the petitioner one Thamaraiselvan died when a wordy duel escalated into physical violence. To be noted, in the trial court, petitioner was A1 and his spouse Selvi @ Dhanaselvi was A2. As regards motive, the trial court believed the prosecution version that there was some enmity between neighbours owing to a water tank and mosquitoes breeding therein.

4.The petitioner has been incarcerated from 30.06.2022 (date of conviction by trial court) and he was in jail for 15 days prior to that. This means that the petitioner has served one year sentence is learned counsel's say.



CRL.M.P.NO.1145 OF 2023
IN CRL.A.NO.909 OF 2022

5.Learned Prosecutor submitted to the contrary and adverting to the counter (to be noted, counter was filed for serving the purpose of 'showing cause in writing against release' being the expression in proviso to Section 389(1) of Cr.P.C.,) submitted that the conviction and sentence handed down by the trial court is sound and as many as 17 prosecution witnesses were examined.

6.Mr.S.Nambirajan, learned counsel for petitioner and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor for respondent are before us and after hearing both sides, we are inclined to accede to the prayer for suspension of sentence. The points, discussions and dispositive reasoning i.e., reasons for the same are as follows:

(i) 30.06.2022 conviction is qua a 14.03.2020 occurrence which is clearly an act of sudden provocation wherein a wordy duel between neighbours got escalated into physical violence;



CRL.M.P.NO.1145 OF 2023
IN CRL.A.NO.909 OF 2022

(ii) no weapons were used and the overtact attributed to the petitioner is that he kicked with his leg on the stomach and chest portion of the deceased;

(iii) it is evident from paragraph 27 at page 31 of the judgment of the trial court that deceased Thamaraiselvan was about 60 years old and he was obese. The most relevant portions of paragraph 27 of the trial court judgment are as follows:

'27... இறந்த தாமரைச்செல்வன் சுமார் 60 வயது மதிக்கத்தக்க நபர். அவர் உடல் பருமன் உடையவர் என்பது இரு தரப்பிலும் ஒப்புக்கொள்ளப்பட்டது.... ஆகவே, இறந்த தாமரைச்செல்வன் சுமார் 60 வயதுடைய வயோதிகர் என்பதும், அவர் உடல்நிலை சரியில்லாமல், உடல் பருமன் உடையவர் என்பதும் தெளிவாகிறது. அப்படியிருக்க, சுமார் 60 வயதுடைய வயோதிகர், உடல்நலம் சரியில்லாதவர், உடல் பருமன் உடைய நபரை எதிரிகள் இருவரும் கீழே தள்ளி, அதன் விளைவாக அவருடைய தலை தரையில் மோதி மூளையில் இரத்தக்கசிவு ஏற்பட்டு, சுய நினைவின்றி இருந்த நிலையில், அவரை எதிரிகள் இருவரும் மாறி, மாறி உதைத்துள்ளார்கள் ...'



CRL.M.P.NO.1145 OF 2023
IN CRL.A.NO.909 OF 2022

(iv) spouse of the petitioner was arrayed as A2 and A2 was also handed down similar sentence, A2 has preferred a separate appeal against conviction and sentence vide Crl.A.No.909 of 2022 and in that criminal appeal, another coordinate Hon'ble Division Bench has granted suspension of sentence to A2 in and by an order dated 23.12.2022 in Crl.M.P.No.12698 of 2022;

(v) as regards the submission of the learned Prosecutor that as many as 17 witnesses were examined, P.W.2 to P.W.6 are interested witnesses being close relative of the deceased. To be noted, P.W.2 is wife and P.W.5 is the brother of the deceased. P.W.10 who is the observation mahazar witness turned hostile;

(vi) the argument of the learned counsel for the petitioner that this being a case of sudden provocation and no weapons having been used by A1 will ultimately qualify vide one of the exemption qua Section 300 of IPC and therefore there is palpable chance of success / acquittal in main



CRL.M.P.NO.1145 OF 2023
IN CRL.A.NO.909 OF 2022

appeal impresses us. As regards palpable possibility and tangible chance i.e., a real chance of acquittal in the appeal for A1, we have applied principles laid down by the Hon'ble Supreme Court in ***OMPRAKASH SAHNI VS. JAI SHANKAR CHAUDHARY [2023 SCC ONLINE SC 551]***.

7. This court having been set out its discussions and dispositive reasoning qua the reasons for acceding to the suspension of sentence plea makes the following order:

(a) the sentence of the trial court i.e., sentence dated 30.06.2022 in S.C.No.93 of 2020 on the file of the III Additional District and Sessions Court, Cuddalore at Vridhachalam is suspended in so far as the petitioner is concerned pending appeal and the bail is subject to conditions adumbrated infra in the other sub-paragraphs;



CRL.M.P.NO.1145 OF 2023
IN CRL.A.NO.909 OF 2022

(b) the petitioner (A2) shall deposit the fine amounts before the trial Court if not already deposited (we are informed that fine amounts have been paid but while furnishing sureties, this aspect shall be demonstrated to the Court to whose satisfaction the sureties are to be executed);

(c) the petitioner (A2) shall execute a bond and furnish two sureties each for a likesum of Rs.10,000/- [Rupees Ten Thousand only] and one of the sureties should be a blood relative to the satisfaction of the learned III Additional District and Sessions Judge, Cuddalore at Vridhachalam;

(d) after coming out from jail, the petitioner shall appear and sign before the learned Chief Judicial Magistrate, Vellore District, Vellore, on every Monday and if Monday becomes a public



WEB COPY



CRL.M.P.NO.1145 OF 2023
IN CRL.A.NO.909 OF 2022

holiday, on the first working day of the week at
10.30 am until further orders; and

(e) the petitioner shall stay in **Vellore District** and shall not go to Cuddalore District without prior permission of the Chief Judicial Magistrate, Vellore District.

8. This Crl.MP is disposed of in the aforementioned manner with aforementioned directives.

[M.S., J.]

[R.S.V., J.]

06.07.2023

(1/2)

P.S: Registry to forthwith communicate this order to Jail Authorities in Central Prison, Cuddalore.



WEB COPY



CRL.M.P.NO.1145 OF 2023
IN CRL.A.NO.909 OF 2022



WEB COPY



CRL.M.P.NO.1145 OF 2023
IN CRL.A.NO.909 OF 2022

M.SUNDAR, J.
AND
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CRL.M.P.NO.1145 OF 2023
IN CRL.A.NO.909 OF 2022

06.07.2023

(1/2)



WEB COPY



CRL.M.P.NO.1145 OF 2023
IN CRL.A.NO.909 OF 2022

Crl.M.P.No.1145 of 2023
in
Crl.A.No.909 of 2022

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R.SAKTHIVEL, J.,

[Order of the Court was made by M.SUNDAR. J]

Captioned 'Criminal Miscellaneous Petition' [hereinafter 'Crl.MP' for the sake of convenience and clarity] has been listed under the cause list caption 'FOR BEING MENTIONED' today as a minor inadvertent error has crept in qua order dated 06.07.2023 vide which the captioned Crl.MP was disposed of.

2. In sub-paragraphs (b) and (c) of paragraph No.7, the petitioner has been described as petitioner with A2 within parenthesis i.e., 'petitioner (A2)' whereas it should read as 'petitioner (A1)'.

3. Mr.S.Nambirajan, learned counsel on record for petitioner and Mr.A.Gokulakrishnan, learned State Additional Public Prosecutor for State are before us.



CRL.M.P.NO.1145 OF 2023
IN CRL.A.NO.909 OF 2022

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4. As regards sub-paragraphs (b) and (c) in paragraph No.7, 'petitioner (A2)' will now read as 'petitioner (A1)'. In all other aspects, the order dated 06.07.2023 will remain the same.

5. This order will be treated as an Errata / corrigendum qua original / earlier order dated 06.07.2023 and original order shall now be uploaded again along with this order now and any certified copy issued from now on qua captioned matter shall now be issued along with this order which will serve as Errata / corrigendum.

Registry need not list this matter any further.

[M.S., J] [R.S.V., J]
13.07.2023

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Crl.M.P.No.1145 of 2023
in
Crl.A.No.909 of 2022