

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.9.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 961 of 2015

1. Dhanalakshmi
2. Kannapiran

.. Petitioners[Accused]

Versus

State rep.by
Inspector of Police
Senthamangalam Police Station
Namakkal District

.. Respondent
[Complainant]

Criminal Revision Petition filed under Section 397 and 401 of Cr.P.C. against the order dated 03.9.2005 made in C.M.P. No. 829 of 2015 in C.A.No.38 of 2015 on the file of the Principal Sessions Judge, Namakkal.

For Petitioner : Mr. W.Camyles Gandhi

For Respondent : Mr. V.Arul
Government Advocate (Criminal side)

ORDER

The petitioner has filed the above Criminal Revision Petition challenging the order dated 03.9.2015 passed by the Court below in rejecting the application filed by the petitioner under Section 389 (1) of Cr.P.C. to suspend the sentence of conviction imposed in C.C.No.119 of 2011.

2. The respondent filed a complaint against the petitioners under Section 380 read with 109 IPC in C.C.No.119 of 2011 on the file of the learned Judicial Magistrate No.II, Namakkal. After due trial, the learned Magistrate convicted the petitioners and sentenced them to undergo 2 years simple imprisonment and to pay a fine of Rs.1000/- each in default to undergo simple imprisonment for three months by a judgment dated 05.8.2015. Aggrieved over the same, the petitioners preferred an appeal in C.A.No.38 of 2015 on the file of the Principal Sessions Judge, Namakkal. Pending Criminal Appeal, the petitioners filed an application under Section 389 (1) Cr.PC. in C.M.P.No.829 of 2015 seeking suspension of sentence and the same was dismissed on 10.9.2015 by the learned Principal Sessions Judge, Namakkal on the ground that properties were not recovered and if the sentence is suspended, it would hinder for the recovery of other properties.

Aggrieved over the said order, the petitioners have filed the above Criminal Revision case.

3. The learned counsel for the petitioners would submit that portion of the properties have already been recovered and the petitioners are not liable to produce anything. The learned counsel for the petitioners would further submit that there are lot of material contradictions in the evidence of the prosecution and the prosecution evidence is also highly unbelievable. The learned counsel for the petitioners would also submit that the prosecution did not prove the case beyond reasonable doubt and hence, the benefit of doubt goes to the petitioners and the Court below ought to have acquitted the petitioners. It is submitted that the petitioners have already paid the fine amount.

4. The learned Government Advocate would submit that the petitioners have already filed Criminal Appeal and the same is pending and hence, the Court below has rightly dismissed the application filed by the petitioners under Section 389 (1) Cr.PC. The learned Government Advocate would further submit that major portion of the properties were not recovered so far and if the sentence of petitioners is suspended, they would flee away and would hinder for the recovery of the properties.

5. Heard the learned counsel for the petitioners, learned Government Advocate (Criminal side) appearing for the respondent and perused the materials available on record.

6. The petitioners are convicted for the offence under Section 380 read with 109 IPC and sentenced them to undergo simple imprisonment for two years and to pay a fine of Rs.1000/- each in default to undergo simple imprisonment for three months. As rightly pointed out by the learned Government Advocate, major portion of the properties are yet to be recovered in this case. But at the same time, that may not be a ground to dismiss the application filed under Section 389 (1) Cr.P.C. Further, it is submitted that the petitioners have already paid the fine amount.

7. Considering the submission made by the learned counsel for the petitioners and considering the fact that the petitioners have already paid the fine amount, I am of the considered opinion that the petitioners are entitled for the relief of suspension of sentence, however, on certain conditions.

8. Accordingly, the Criminal Revision case is allowed and the substantive sentence of imprisonment alone is suspended and the petitioners are directed to be enlarged on bail, on the following conditions:-

- (i) Each of the petitioners, in order to show bonafide, shall deposit a sum of Rs.1,00,000/- (Rupees One Lakh only) to the credit of C.C.No.119 of 2011 on the file of the learned Judicial Magistrate

No.II, Namakkal, within a period of four weeks from the date of receipt of a copy of this order.

(ii) Each of the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.II, Namakkal

(iii) The petitioners shall appear before the Courts below as and when required.

(iv) The petitioners shall also file an undertaking affidavit before the learned Judicial Magistrate No.II, Namakkal to the effect that they will not hinder for the recovery of properties in any manner.

(v) The petitioners shall surrender their passport, if any, before the learned Judicial Magistrate No.II, Namakkal.

9. It is made clear that if the petitioners fail to comply with any one of the above condition, the order of the lower appellate Court shall stand restored and this order will not enure to the benefit of the accused.

Sd/-
Asst. Registrar

/true copy/ सत्यमेव जयते

Sub Asst. Registrar.

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To

1. The Principal Sessions Judge, Namakkal.
 2. The Judicial Magistrate No.II, Namakkal.
 3. -do- through the Chief Judicial Magistrate, Namakkal.
 4. The Inspector of Police, Inspector of Police
Senthamangalam Police Station
Namakkal District
 5. The Public Prosecutor, High Court, Chennai.
- +1cc to Mr.W.Camyles Gandhi, Advocate SR.No.49340

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