



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

Monday, the Twenty Sixth day of September Two Thousand Sixteen

PRESENT

The Hon`ble Mr.Justice S.NAGAMUTHU
and

The Hon`ble Mr.Justice M.V.MURALIDARAN

CRL MP(MD) No.9192 of 2016

IN

CRL A(MD) No.349 of 2016

1 BANGUBALAN @ BALAMURUGAN

2 ASHOK @ ASHOK KUMAR

... PETITIONERS/APPELLANTS

Vs

STATE THROUGH
THE INSPECTOR OF POLICE,
SELLUR POLICE STATION,
MADURAI

CRIME NO.1789/2007

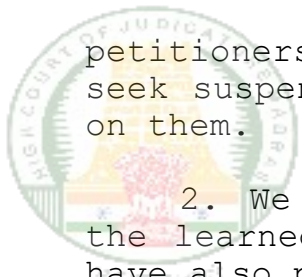
... RESPONDENT/RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the substantive sentence rendered by the learned V Additional District and Sessions Judge, Madurai in S.C.No.175/2015 dated 31.08.2016 as against the Petitioners/Appellants above named and enlarge the petitioners on bail pending disposal of the above Criminal Appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.N.ANANTHAPADMANABHAN, Advocate for the petitioners and of MR.R.RAMACHANDRAN, Additional Public Prosecutor on behalf of the Respondent, while admitting the Criminal Appeal and this court made the following order:-

(Order of the Court was made by **S.NAGAMUTHU, J**)

The petitioners/appellants are the accused 1 and 2 in S.C.No.175 of 2015 on the file of learned V Additional District and Sessions Judge, Madurai. They stood charged for offences under Sections 302 read with 34, 307 and 506(ii) IPC. By judgment dated 31.08.2016, the trial Court convicted them under Section 302 r/w 34 IPC and sentenced them to undergo imprisonment for life and to pay a fine of Rs.5,000/- each, in default to undergo simple imprisonment for one month. The trial Court, however, acquitted them from the charges under Sections 307 and 506(ii) IPC. Challenging the said conviction as well as sentence imposed, the



petitioners have come up with this appeal. Pending appeal, they seek suspension of the substantive sentence of imprisonment imposed on them.

2. We have heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the respondent and we have also perused the records carefully.

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3. The learned counsel for the petitioners/appellants submitted that in this case, the conviction and sentence imposed on the appellants is illegal, as the trial Court has convicted the accused not on any admissible evidence, either oral and documentary, but on the statements of witnesses recorded during the investigation under Section 161 of the Code of Criminal Procedure. The learned counsel has taken us through the judgment of the trial Court to substantiate his contentions.

4. The learned Additional Public Prosecutor is not able to refute the said submissions.

5. A perusal of the judgment of the trial Court would go to show that as many as 23 witnesses have been examined in this case, out of whom, all the witnesses, who were examined to speak about the occurrence, have turned hostile and they have not whispered anything against these accused and the witnesses to speak about the recovery of the material objects also have turned hostile and they have also not supported the case of the prosecution. Except the Doctors and police witnesses, none has spoken anything against the accused. But the trial Court has extensively quoted the statements of these witnesses, alleged to have been recorded during investigation under Section 161 Cr.P.C. and the trial Court has compared those statements with the postmortem certificate treating them all as substantive evidence and has come to the conclusion that from and out of the statements of these witnesses recorded under Section 161 of the Code of Criminal Procedure and the postmortem certificate, the prosecution has proved the guilt of these accused. The trial Court has even referred to some of the witnesses as L.Ws.

6. A thorough perusal of the judgment of the trial Court would go to show that the trial Court has referred to 36 witnesses as L.Ws., referred to their statements recorded under Section 161 of the Code of Criminal Procedure and has delivered judgment on the same. In our considered view, it is illegal.

7. In view of the foregoing discussions, we are inclined to suspend the substantive sentence of imprisonment alone imposed on the petitioners pending appeal. Accordingly, this petition is allowed and the substantive sentence of imprisonment imposed on the petitioners alone is suspended and the petitioners are directed to be enlarged on bail, on the following conditions:

Each of the petitioner shall execute a bond for a sum of <https://hcservices.recourts.gov.in/hcservices/> 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, Madurai and on further condition that the petitioners shall report before the concerned Court at 10.30 a.m., on the first working day of every English Calender Month, until further orders.
sd/-

26/09/2016

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, MADURAI.
- 2 THE JUDICIAL MAGISTRATE NO.II, MADURAI.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, MADURAI.
- 4 THE INSPECTOR OF POLICE,
SELLUR POLICE STATION, MADURAI
- 5 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.

COPY TO:

1. THE REGISTRAR (ADMIN)
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
2. THE SECTION OFFICER,
B SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.N.ANANTHAPADMANABHAN Advocate SR.No.55737

RR

CSL/DB/SAR-I/04.10.2016: 3P/9C

ORDER

IN

CRL MP(MD) No.9192 of 2016

IN

CRL A(MD) No.349 of 2016

Date :26/09/2016