

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Second day of February Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice M. VENUGOPAL

CRIMINAL MISCELLANEOUS PETITION No.1494 of 2017

IN CRL A.52/2017

1 D.PRASANTH @ RAMPRASATH
2 R.SARANRAJ
3 K.AARAAMUTHU
4 P.SURESH
5 E.GNANAMOORTHY

[PETITIONERS]

Vs

STATE REP. BY
THE DEPUTY SUPERINTENDENT OF POLICE,
VILLUPURAM SUB DIVISION,
VALAVANUR POLICE STATION,
VILLUPURAM.
CR.NO.684 OF 2012

[RESPONDENT]

Petition praying that in the circumstances stated therein the High Court will be pleased to suspend the sentence imposed by the learned Sessions Judge Special Court for Exclusive Trial of Cases registered under Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989, Villupuram by a judgment dated 09.01.2017 made in S.C.No.212 of 2015 and enlarge the petitioner on bail pending disposal of the above CRL A.52/2017 [IN CRL.MP.NO.1494 OF 2017]

Order : This petition coming on for orders upon perusing the petition and upon hearing the arguments of M/S.R.JOHN SATHYAN, Advocate for the petitioner and of MR.R.RAVICHANDRAN, Government Advocate (Crl.Side) on behalf of the Respondents the court made the following order:-

Heard Mr.R.John Sathyan, Learned Counsel for the Petitioners/Appellants and Mr.R.Ravichandran, Learned Government Advocate (Crl.Side) for the Respondent.

2.The Petitioners/Appellants/A1 to A5 have focussed the instant Criminal Appeal before this Court as against the Judgment dated 09.01.2017 in S.C.No.212 of 2015 passed by the Learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Villupuram.

3.The Petitioners/Appellants/A1 to A5 were found guilty by the trial Court in respect of an offence under Section 148 I.P.C. and they were convicted and sentenced to undergo simple imprisonment for one year each and further, they were ordered to pay a fine of Rs.1,000/- each and in default of payment of fine, they were directed to undergo simple imprisonment for a period of three months each.

4.In so far as the offence under Section 341 I.P.C., the Petitioners/Appellants/A1 to A5 were found guilty and they were convicted and sentenced to undergo simple imprisonment for one month each and also they were ordered to pay a fine of Rs.500/- each and in default of payment of fine, they were directed to undergo simple imprisonment for 7 days each. As regards the offence under Section 324 I.P.C., the 1st Petitioner/1st Appellant/A1 was found guilty and he was convicted and sentenced to undergo simple imprisonment for a period of one year and he was also directed to pay a fine of Rs.1000/- and in default of payment of fine, he was also directed to undergo simple imprisonment for a period of three months.

5.Apart from the above, the Petitioners/Appellants/A1 to A5 were found guilty in respect of an offence punishable under Section 3(1)(x) of the SC/ST (POA) Act, 1989 and they were convicted and sentenced to undergo simple imprisonment for one year each and they were also directed to pay a fine of Rs.5,000/- each and in default of payment of fine, they were ordered to undergo simple imprisonment for three months each.

6.It comes to be known that the total fine amount payable by the 1st Petitioner/1st Appellant/A1 was Rs.7,500/- and it is represented before this Court that the same was paid before the trial Court. Likewise, the Petitioners 2 to 5/Appellants 2 to 5 (A2 to A5) had remitted a fine of Rs.6,500/- each before the trial Court. Aggregating in all, the total fine amount of Rs.33,500/- was paid by the Petitioners 1 to 5/Appellants 1 to 5 (A1 to A5).

7.The Petitioners/Appellants have preferred the instant Criminal Appeal before this Court, being dissatisfied with the Judgment of the trial Court dated 09.01.2017, in S.C.No.212 of 2015, primarily taking a plea that the trial Court had committed an error in convicting the Petitioners/Appellants based on the uncorroborated testimony of P.W.1. Furthermore, the trial Court had not taken into consideration that P.W.8, who purportedly went along with P.W.1 in a two wheeler at the alleged time of occurrence, had not supported the case of prosecution and was treated as hostile witness.

8.Advancing his arguments, the Learned Counsel for the Petitioners/Appellants takes a stand that P.W.1 had admitted that a case was registered against him and others in Crime No.683 of 2012 on the file of Valavanur Police Station based on the complaint given by one Dhakshinamoorthy [who is none other than the father of the 1st Petitioner/1st Appellant/A1] and therefore, the present case in S.C.No.212 of 2015 is nothing but a malicious counter-blast to the case registered against P.W.1.

9.The Learned Counsel for the Petitioners/Appellants projects an argument that there is an inordinate and unexplained delay of 30 hours in preferring the complaint and in reality, the occurrence took place at about 4.00 p.m. on 22.07.2012, whereas the complaint was lodged at 10.00 p.m. on 23.07.2012, which was the evidence tendered in chief by P.W.1 and in the instant case, the delay assumes significance and indeed, he was treated as an out-patient as per Ex.P8 (Accident Register).

10.The Learned Counsel for the Petitioners/Appellants contends that the medical evidence does not support the prosecution case and in fact, the trial Court had not looked into these aspects in a proper and real perspective.

11.At this juncture, this Court, on perusal of the 'Memorandum of Grounds of Appeal' preferred by the Petitioners/Appellants/A1 to A5, is of the considered opinion that the Petitioners/Appellants have raised some substantial/arguable points which require detail consideration in the hands of this Court at the time of final hearing of the main Criminal Appeal.

12.Per contra, it is the submission of the Learned Government Advocate (Crl.Side) that before the trial Court on behalf of the Respondent/Prosecuting Agency, witnesses P.W.1 to P.W.10 were examined and Exs.P1 to P14 were marked and M.O.1 was also marked. D.W.1 was examined and Exs.D1 to D7 were marked. The trial Court, on an appreciation of entire oral and documentary evidence available on record, had found the Petitioners/Appellants/A1 to A5 guilty in respect of the offences under Sections 148, 341 I.P.C. and Section 3 (1)(x) of the SC/ST (POA) Act and imposed necessary punishments. Also that, the trial Court found the 1st Petitioner/1st Appellant/A1 guilty in respect of an offence under Section 324 I.P.C. and imposed him necessary punishment.

13.In this connection, it may not be out of place for this Court to make a significant mention that when an aggrieved/Accused is sentenced to short term imprisonment, the normal rule is that pending Appeal, the sentence should be suspended and reduction is only by way of exception, as per decision of the Hon'ble Supreme Court in **Bhagwanram Shinde V. State of Gujarat, 1999 (39) ACC 302 (SC)**.

14.It is to be noted that an 'Appeal' is a continuation of Original Proceedings of the trial Court [viz., that of S.C.No.212 of 2015]. As aggrieved persons, the Petitioners/Appellants/A1 to A5 have exercised their right of preferring the present Appeal as envisaged under Criminal Procedure Code.

15. Inasmuch as the Petitioners/Appellants/A1 to A5 have filed the instant Criminal Appeal before this Court and this Court, taking note of the fact that an 'Appeal' is a continuation of Original Proceedings of the trial Court and also, this Court, by keeping in mind the attendant facts and circumstances of the case and also considering the fact that the present Criminal Appeal is not likely to be taken up for final hearing in the near future, at this stage, is inclined to suspend the Substantial Sentence of Imprisonment alone and orders the release of the Petitioners/Appellants/A1 to A5 on each of them executing a bond for a sum of Rs.15,000/- (Rupees Fifteen Thousand only) with two sureties each for a like sum to the satisfaction of the Learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Villupuram and on further condition that they shall appear before the said Court on the First Working day of every English Calendar month at 11.00 a.m. without fail, till the disposal of the Criminal Appeal.

16. Accordingly, the CrI.M.P.No.1494 of 2017 is ordered, on above terms.

-sd/-
02/02/2017

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SESSIONS JUDGE,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
REGISTERED UNDER SCHEDULED CASTES AND
SCHEDULED TRIBES [PREVENTION OF ATROCITIES]
ACT, VILLUPURAM.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE DEPUTY SUPERINTENDENT OF POLICE,
VILLUPURAM SUB DIVISION,
VALAVANUR POLICE STATION,
VILLUPURAM.

+1C.C. to M/S.R.JOHN SATHYAN Advocate on payment of necessary charges SR.NO.2175

Order

in
CRL MP.1494/2017

in
CRL A.52/2017

Date :02/02/2017

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MK:02/02/2017