

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the First day of June Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice M. VENUGOPAL

CRIMINAL MISCELLANEOUS PETITION No.1940 of 2017

IN CRL A.68/2017

VEERAPPAN,

[PETITIONER/APPELLANT/ACCUSED]

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
KUMARAPALAYAM POLICE STATION,
NAMAKKAL DISTRICT.
CR.NO.228 OF 2000

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.68 of 2017 on the file of the High Court, the High Court will be pleased to suspend the sentence made in S.C.No.25 of 2003 on the file of the Additional District and Sessions Judge, Namakkal dated 09.12.2016 and enlarge on bail and enlarge on bail and pass such further or other orders as this Hon'ble Court.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.68 of 2017 on the file of the High Court and upon hearing the arguments of MR.S.N.ARUN KUMAR, Advocate for the petitioner and of MR. K.MATHAN, Govt. Advocate (Crl. Side) for the Respondent the court made the following order:-

The Petitioner / Appellant / A.1 has focused the present Criminal Appeal before this Court (as an aggrieved person) as against the Judgment dated 09.12.2016 in S.C.No.25 of 2003 passed by the Learned Additional District and Sessions Judge, Namakkal.

2. It comes to be known that the trial Court while passing the Impugned Judgment dated 09.12.2016 in S.C.No.25 of 2003 had found the Petitioner / Appellant / A.1 guilty in respect of an offence under Section 307 of IPC and awarded punishment of 10 years Rigorous Imprisonment and imposed a fine of Rs.1,000/-. Further, in default of payment of fine, he was directed to undergo a punishment of Three Months Rigorous Imprisonment. The period already undergone by the Petitioner / Appellant / A.1 was directed to set off under Section 428 of Cr.P.C.,

3. According to the Learned Counsel for the Petitioner / Appellant / A.1, the Judgment of the trial Court dated 09.12.2016 in S.C.No.25 of 2003 is contrary to Law, Weight of Evidence and Probabilities of the Case.

4. Advancing his arguments, the Learned Counsel for the Petitioner submits that the trial Court had not seen that there was an inordinate and unexplained delay of 9 ½ hours in filing the case although the distance between the police station and the scene of occurrence is only 1 ½ K.M.

5. Expatiating his contention, the Learned Counsel for the Petitioner / Appellant takes a stand that in the Accident Register (Official Document), it was mentioned that the injured (P.W.1) was assaulted by Six known persons. However, the Respondent / Complainant / Prosecution has arrayed only two persons as accused and that the Inspector of Police had not investigated the case in a proper manner.

6. The Learned Counsel for the Petitioner proceeds to state that there is no material available on record to convict the Petitioner / Appellant / A.1 under Section 307 of IPC. Besides this, the evidence of witness before the trial Court was not an inspiring one and in reality, the trial Court should have rejected it in an outright fashion.

7. Lastly, it is contended on behalf of the Petitioner / Appellant / A.1 that the trial Court had not appreciated the facts and circumstances of the present case in an proper and realistic manner.

8. At this stage, the Learned Counsel for the Petitioner / Appellant / A.1 brings it to the notice of this Court that one Muthu @ Pachamuthu (A.2) filed CrI.M.P.No.13826 of 2016 in CrI.A.No.844 of 2016 and on 04.04.2017, this Court had granted 'Suspension of Sentence' and ordered of his release on his executing the bond for a sum of Rs.15,000/- with two sureties each etc.,

9. It is represented on behalf of the Petitioner / Appellant / A.1 that the fine amount of Rs.1,000/- imposed by the trial Court was paid by the Petitioner / Appellant / A.1 before the trial Court itself to the credit of S.C.No.25 of 2003 on 09.12.2016 (the date of judgment itself).

10. In response, the Learned Government Advocate (CrI.Side) for the Respondent / Complainant contends that based on the intimation from the Government Hospital, Erode, the Sub Inspector of Police attached to Kumarapalayam, visited the hospital and met the victim, P.W.1 (Thangavel) and recorded his statement, which reveals that on 10.04.2000 at about 8.30 p.m., in front of Dharani T.V.World Show Room, due to previous motive, the Petitioner / Appellant / A.1 together with A.2 and Three known persons formed themselves into an unlawful assembly to cause the death of witness, P.W.1 being armed with deadly weapons.

11. The Learned Government Advocate (Crl.Side) for the Respondent submits that the Petitioner / Appellant / A.1 attacked the Complainant (P.W.1) by using Koduval and another accused, namely, A.2 stabbed him on his back by knife. The Other Three unknown persons beat him all over his body with weapons, as a result of which, the Complainant (P.W.1.) sustained grievous and simple injuries and got admitted to the Government Hospital, Erode. Subsequently, the P.W.1 / Complainant got discharged and was admitted to LKM Hospital, Erode for further treatment and complaint was lodged.

12. The Learned Government Advocate (Crl.Side) brings it to the notice of this Court that based on the complaint, a case in Kumarapalayam Police Station, Namakkal, Crime No.228 of 2000 was registered under Sections 147, 148, 341, 324, 307 of IPC by then Sub Inspector of Police on 11.04.2000 at 5.30 A.M., and that the investigation was taken by the then Inspector of Police. It appears that on 19.04.2000, the Petitioner / Appellant / A.1 and A.2 surrendered before the Learned Judicial Magistrate No.III, Salem.

13. It transpires that after completion of investigation on 02.03.2001, the then, Inspector of Police, laid charge sheet against the Petitioner / Appellant / A.1 and A.2 and altered the Sections into 148, 307 read with 149 of IPC and submitted the same before the Learned Judicial Magistrate No.I, Sangagiri.

14. It is not in dispute that the Learned Judicial Magistrate No.I, Sangagiri took the case on file in P.R.C. No.7 of 2001 dated 29.03.2001 and thereafter, the case was committed to Learned Additional District and Sessions Judge, Namakkal in S.C.No.25 of 2003 after full fledged trial on 29.09.2003, the Learned Additional District and Sessions Judge, (FTC No.III), Namakkal convicted the Petitioner / Appellant / A.1 and sentenced him to undergo Three years Rigorous Imprisonment in respect of an offence under Section 148 of IPC. In regard to an offence under Section 307 of IPC, he was awarded with a Rigorous Imprisonment of Seven Years and further, he was imposed with a fine of Rs.500/- and in default of payment of fine, he was directed to undergo Six Months Rigorous Imprisonment.

15. It is represented on behalf of the Learned Government Advocate (Crl.Side) that A.2 projected an Appeal in C.A.No.1641 of 2003 being aggrieved against the Judgment of the Learned Additional District and Sessions Judge, (FTC No.III), Namakkal in S.C.No.25 of 2003 and this Court through its Judgment on 07.09.2015 directed the trial Court to conduct a Denovo trial and further directed to dispose of the case before the end of December 2015.

16. According to the Learned Government Advocate (Crl.Side) for the Respondent / Prosecution, the case was transferred to the file of Learned Additional District and Sessions Judge, Namakkal in S.C.No.25 of 2003 and after contest, on 09.12.2016, the Learned Additional District and Sessions Judge, Namakkal convicted the Petitioner / Appellant / A.1 in respect of an offence under Section 307 of IPC and awarded a punishment of 10 years Rigorous Imprisonment. Also the

Petitioner / Appellant / A.1 was directed to pay a fine of Rs.1,000/-, in default of payment of fine, he was directed to undergo Rigorous Imprisonment for a period of Three Months. Therefore, as an affected person, the Petitioner / Appellant / A.1 has filed the present Miscellaneous Petition Crl.M.P.No.1940 of 2017 in Crl.A.No.68 of 2017 seeking to 'Suspend the Sentence' imposed on him by the trial Court through its Judgment dated 09.12.2016 in S.C.No.25 of 2003.

17. The core submission projected on the side of the Respondent / Complainant is that the trial Court had delivered the Judgment in S.C.No.25 of 2003 dated 09.12.2016 after taking into consideration of the relevant available material evidence on record and also the facts and circumstances of the present case. In short, the trial Court had taken into account of the evidence of witnesses, P.Ws.1 to 8, coupled with the medical evidences and the documents so marked. In view of the same, there is no need to Suspend the Sentence imposed on the Petitioner / Appellant / A.1 by the trial Court.

18. This Court has heard the Learned Counsel for the Petitioner / Appellant / A.1 and the Learned Government Advocate (Crl.Side) for the Respondent / Complainant and noticed their contentions.

19. In this connection, this Court very pertinently points out that on perusal of the numerous grounds raised by the Petitioner / Appellant / A.1 in the grounds of Appeal in Crl.A.No.68 of 2017 is of the earnest view that the Petitioner / Appellant / A.1 has raised some substantial / tangible points, which require detail consideration at the hands of this Court during the time of final hearing of main Appeal.

20. Be that as it may, in view of the fact that the co-accused viz., Muthu @ Pachamuthu (A.2) was granted Suspension of Sentence in Crl.M.P.No.13826 of 2016 in Crl.A.No.844 of 2016 by this Court on 04.04.2017, this Court is also of the considered view that the Petitioner stands on the same footing as that of A.2, therefore, this Court taking note of the fact that the Petitioner has preferred the instant Criminal Appeal before this Court, as an affected person and also bearing in mind another important fact that the present Criminal Appeal is not likely to be taken up for final hearing in the immediate future and also by considering the other facts and circumstances of the present case, which float on the surface, at this juncture, is inclined to Suspend the Substantial Sentence of Imprisonment alone and directs the release of the Petitioner / Appellant on his executing a bond for a sum of Rs.15,000/- (Rupees Fifteen Thousand only) with two sureties each for a likesum to the satisfaction of the Learned Additional District and Sessions Judge, Namakkal and on further condition that he shall appear before the said Court on the 1st Working day of every English calendar month at 11.00 a.m. without fail till the disposal of the Appeal.

Accordingly, the Crl.M.P.No.1940 of 2017 is ordered on the above terms.

-sd/-
01/06/2017

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 ADDL. DISTRICT AND
SESSIONS JUDGE, NAMAKKAL.

2 THE PRINCIPAL SESSIONS JUDGE,
NAMAKKAL. [FOR INFORMATION]

3 THE ADDL. DISTRICT AND SESSIONS JUDGE
(FTC NO.III), NAMAKKAL

4 THE SUPERINTENDENT,
CENTRAL PRISON, SALEM.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
KUMARAPALAYAM POLICE STATION,
NAMAKKAL DISTRICT.

+1 C.C. to M/S.S.N.ARUN KUMAR Advocate on payment of necessary charges-Sr.9626

Order

in
CRL MP.1940/2017

in
CRL A.68/2017

Date :01/06/2017

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
ths : 01.06.2017