

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Third day of April Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice M. VENUGOPAL

CRIMINAL MISCELLANEOUS PETITION No.2260 of 2017

IN CRL A.73/2017

MUNNA,

[PETITIONER/APPELLANT/ACCUSED]

Vs

THE STATE OF TAMIL NADU [RESPONDENT]
REPRESENTED BY THE INSPECTOR OF POLICE,
PALACODE POLICE STATION,
DHARMAPURI DISTRICT.
(REF.CR.NO.360/2014)

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal APPEAL No.73 OF 2017 on the file of the High Court, the High Court will be pleased to suspend the sentence of imprisonment for three years imposed under Section 67 (B) of the Information Technology Act, sentence of 2 years imposed under Section 66(B) of the Information Technology Act and sentence of one year imposed under Section 292 IPC, imposed by the learned Sessions Judge, Fast Track Mahila Court, Dharmapuri in S.C.No.109/2015 vide judgment dated 18.01.2017 till the disposal of Criminal Appeal in C.A.No.73/2017 pending on the file of this Honourable Court.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.73 of 2017 on the file of the High Court and upon hearing the arguments of M/S.V.VIJAYAKUMAR, Advocate for the petitioner and of Mr.K.MATHAN, Government Advocate (Crl.Side) on behalf of the Respondent the court made the following order:-

Heard both sides.

2. The Petitioner / Appellant / A.2 has preferred the instant Criminal Appeal before this Court (As an aggrieved person) as against the Judgment dated 18.01.2017 in S.C.No.109 of 2017 passed by the Learned Sessions Judge, (Fast Track Mahila Court), Dharmapuri.

3. The trial Court while passing the Impugned Judgment in S.C.No.109 of 2015 dated 18.01.2017 had found the Petitioner / Appellant / A.2 guilty in respect of an offence under Section 292 of IPC and sentenced him to undergo one year Rigorous Imprisonment and also directed him to pay a fine of Rs.1,000/- (Rupees One Thousand only), in default of payment of said fine, he was directed to undergo

Rigorous Imprisonment for a period of two months.

4. In so far as the Offence under Section 66(B) of the Information Technology Act, 2000, the Petitioner / Appellant / A.2 was found guilty and was sentenced to undergo Two Years Rigorous Imprisonment and was also directed to pay a fine of Rs.10,000/- (Rupees Ten Thousand only), in default of payment of said fine amount, he was directed to undergo Rigorous Imprisonment for a period of Four Months. In regard to an offence under Section 67(A) of the Information Technology Act, 2000, the Petitioner / Appellant / A.2 was sentenced to undergo Three Years Rigorous Imprisonment and was directed to pay a fine of Rs.50,000/- (Rupees Fifty Thousand only), in default of payment of fine, he was directed to undergo Rigorous Imprisonment for Six Months. That apart, the sentences were ordered to run concurrently.

5. Being dis-satisfied with the Judgment of the trial Court dated 18.01.2017 in S.C.No.109 of 2015 passed by the Learned Sessions Judge (Fast Track Mahila Court), Dharmapuri, the Petitioner / Appellant / A.2 has focused the present Criminal Appeal basically contending that the Judgment of the trial court is against Law, weight of evidence and contrary to the facts available on record.

6. The Learned Counsel for the Petitioner / Appellant urges before this Court that the trial court had placed reliance upon the evidence of P.W.6 to convict the Petitioner/ Appellant and in fact in the instant case, there is no legally acceptable piece of evidence on the side of the Respondent / Prosecuting Agency and in short, the conclusion arrived at by the trial court is based on non-application of mind especially to the facts of the case and the evidence available on record.

7. Continuing his arguments, the Learned Counsel for the Petitioner / Appellant takes a stand that the trial court had failed to appreciate that P.W.6 gave three different versions, (i) before the police under Section 161 Cr.P.C., Statement, (ii) during cross examination in chief before the trial court and (iii) during his cross examination before the trial court.

8. The Learned Counsel for the Petitioner / Appellant brings it to the notice of this Court that P.W.7 and P.W.8 had turned hostile and they had not supported the case of the Respondent / Prosecution.

9. The Learned Counsel for the Petitioner / Appellant takes a plea that before the trial court no evidence was adduced on behalf of the Prosecution to establish that the Petitioner / Appellant had received the stolen computer resource or communication device and as such, the convicting the Petitioner / Appellant in respect of an offence under Section 66B of the Information Technology Act, 2000 is clearly unsustainable in the eye of Law.

10. The Learned Counsel for the Petitioner / Appellant submits that the trial court had failed to note that in the absence of

certificate under Section 65B of the Indian Evidence Act, 1872 the electronic evidence cannot be looked into for any purpose, much less as a piece of evidence for convicting an individual.

11. It is also brought to the notice of this Court that a total fine amount of Rs.61,000/- was remitted by the Petitioner / Appellant / A.2 before the trial court to the credit of S.CNo.109 of 2015.

12. Per contra, it is the submission of the Learned Government Advocate (Crl.Side) for the Respondent that before the trial court, in the main case, on behalf of the Respondent / Prosecution, witnesses P.W.1 to P.W.22 were examined and Ex.P.1 to P.36 were marked, also M.O.1 to M.O.6 were marked. On the defense side, no one was examined and no document was marked.

13. It is further represented on behalf of the Respondent that the trial court on an analysis of the entire evidence of prosecution witness and on considering the available material on record, found the First Accused and the Second Accused guilty and awarded them with necessary punishment.

14. It cannot be gainsaid that filing of an 'Appeal' is a statutory right conferred upon an individual accused as envisaged under Criminal Procedure Code. In Law, an 'Appeal' is a continuation of original proceedings. At this stage, this Court on perusal of the various grounds raised in the 'Memorandum of Appeal' is of the considered view that they require detail examination at the time of final hearing of the main Appeal.

15. In view of the fact that the Petitioner / Appellant / A.2 has preferred the instant Criminal Appeal before this Court and this Court taking note of yet another fact that an 'Appeal' is a continuation of original proceedings and also this Court bearing in mind that the present Criminal Appeal is not likely to be taken up for hearing in the immediate future and also considering the overall facts and circumstances of the case, which float on the surface, at this stage, 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 Sessions Judge, (Fast Track Mahila Court), Dharmapuri** and on further condition that he shall appear before the said Court, twice in a week, i.e., on Monday and Wednesday at 11.00 a.m. every month without fail until further orders.

Accordingly, this Miscellaneous Petition is ordered.

-sd/-
03/04/2017

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
(FAST TRACK MAHILA COURT),
DHARMAPURI.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
PALACODE POLICE STATION,
DHARMAPURI DISTRICT.

+2 C.C. to M/S.R.BASKAR Advocate on payment of necessary charges
-Sr.5894

Order

in
CRL MP.2260/2017

in
CRL A.73/2017

Date :03/04/2017

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