

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Fifteenth day of February Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice M. VENUGOPAL

CRIMINAL MISCELLANEOUS PETITION NO.2262 of 2017

IN CRL A.74/2017

DAYALAN

[PETITIONER]

Vs

STATE BY

[RESPONDENT]

DEPUTY SUPERINTENDENT OF POLICE,
TIRUVELLORE TALUK,
TIRUVELLORE DISTRICT.
CR.NO.259/2011.

Petition praying that in the circumstances stated therein the High Court will be pleased to suspend the sentence of R.I. for 6 months imposed in S.C.No.154 of 2014 on the file of Principal District and Sessions Judge, Tiruvellore by a order dated 20.01.2017.

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

Heard Mr.J.R.K.Bhavanantham, Learned Counsel for the Petitioner/Appellant and Mr.R.Ravichandran, Learned Government Advocate (Crl.Side) for the Respondent/Complainant.

2.The Petitioner/Appellant/A1 has focussed the instant Criminal Appeal before this Court as against the Judgment in S.C.No.154 of 2014 dated 20.01.2017 passed by the Principal District and Sessions Judge, Tiruvellore.

3.The Learned Principal District and Sessions Judge, Tiruvellore, while passing the Judgment in S.C.No.154 of 2014 on 20.01.2017, had found the Petitioner/Appellant/A1 guilty in respect of an offence under Section 506(1) I.P.C. and awarded a punishment of six months Rigorous Imprisonment, besides imposing a fine of Rs.1,000/-, in default of payment of said fine amount, he was directed to undergo further three months Simple Imprisonment. In so far as the offence under Section 148, 294(b) and 427 I.P.C. and Sections 3(1)(x), 3(1)(v) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the Petitioner/Appellant/A1 was found not guilty by the trial Court.

4.The Learned Counsel for the Petitioner/Appellant has preferred the instant Criminal Appeal before this Court by taking a plea that the trial Court had failed to note that the Respondent/Prosecuting Agency had failed to establish his case beyond reasonable doubt.

5.The Learned Counsel for the Petitioner/Appellant urges before this Court that the motive for prosecution is a civil dispute raised by the Petitioner/Appellant in O.S.No.84 of 2010 on the file of the Learned District Munsif, Tiruvellore and obtained an order of ad-interim injunction in I.A.No.130 of 2010 against Murugan @ Chinnapaiyan, Deivanayagi and Ravi (P.W.4) etc.

6.The Learned Counsel for the Petitioner/Appellant projects an argument that the trial Court had erroneously placed reliance on the testimonies of P.W.1 to P.W.5 whose evidence are unbelievable, uncorroborative and not a cogent one.

7.The Learned Counsel for the Petitioner/Appellant takes a plea that the trial Court should have seen that the threat alleged ought to be a real one and not just a mere verbatim utterance.

8.Lastly, it is the submission of the Learned Counsel for the Petitioner/Appellant that no specific overt act was attributed to the Petitioner/Appellant by the Defacto Complainant and unfortunately, this aspect of the matter was not taken note of by the trial Court in a proper and real perspective.

9.Conversely, it is the submission of the Learned Government Advocate (Crl. Side) for the Respondent that on behalf of the Respondent/Prosecution as many as 9 witnesses viz., P.W.1 to P.W.9 were examined and Exs.P1 to P9 were marked. However, on the side of the defence, no one was examined as a witness and no document was marked. In fact, the contention of the Learned Government Advocate (Crl. Side) for the Respondent is that the trial Court, on an analysis of entire oral and documentary evidence available on record, came to a resultant conclusion that the Petitioner/Appellant/A1 was guilty of an offence under Section 506 (1) I.P.C. and imposed him with necessary punishments.

10.It is represented on behalf of the Petitioner/Appellant that a fine amount of Rs.1,000/- was paid before the trial Court itself.

11.At this juncture, this Court has perused the various grounds raised in the 'Memorandum of Grounds of Appeal' (filed by the Petitioner/Appellant) and is of the earnest view that they require detail rumination in the hands of this Court at the time of final hearing of the main Appeal.

12.It is to be noted that 'Filing of an Appeal' is a continuation of Original Proceedings of the trial Court. In reality, the Petitioner/ Appellant/A1, in the instant case, has exercised his statutory right of preferring the Appeal as envisaged under Criminal Procedure Code.

13.It cannot be forgotten that filing of a 'Miscellaneous Petition' seeking 'Suspension of Sentence' and to enlarge an Accused on Bail forms an integral part of the main Appeal.

14.It is to be pointed out that when a person is sentenced to a short term imprisonment, the normal rule is that pending Appeal, the sentence should be suspended and reduction is only by means of an exception, as per decision of the Hon'ble Supreme Court in **Kiran Kumar V. State of M.P. 2000 (41) All CrC 884 (884) (SC)**.

15.Be that as it may, in view of the fact that the Petitioner/ Appellant has preferred the instant Criminal Appeal before this Court and this Court, taking note of the fact that the present Appeal is a continuation of Original Proceedings of the trial Court viz., that of S.C.No.154 of 2014 and also this Court, bearing in mind yet another fact that the the present Criminal Appeal is not likely to be heard in the near future and also considering the other attendant facts and circumstances of the case, at this stage, is inclined to suspend the Substantial Sentence of Imprisonment alone and orders the release of the Petitioner/Appellant/A1 on his 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 Principal District and Sessions Judge, Tiruvellore and on further condition that he shall appear before the said Court on the First Working day of every English Calender month at 11.00 a.m. without fail, till the disposal of the Criminal Appeal.

16.Accordingly, the CrI.M.P.No.2262 of 2017 is ordered, on above terms.

-sd/-
15/02/2017

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 PRINCIPAL DISTRICT AND
SESSIONS JUDGE, THIRUVELLORE.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE DEPUTY SUPERINTENDENT OF POLICE,
TIRUVELLORE TALUK,
TIRUVELLORE DISTRICT.

+1C.C. to M/S.J.R.K.BHAVANANTHAM Advocate on payment of
necessary charges SR.NO.3173

Order

in
CRL MP.2262/2017

in
CRL A.74/2017

Date :15/02/2017

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MK:17/02/2017