

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twenty Fourth day of February Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice M. VENUGOPAL

CRIMINAL MISCELLANEOUS PETITION No.2848 of 2017

IN CRL A.102/2017

1 KUMAR @ SENTHIL KUMAR [PETITIONERS]
2 SELVI
3 VELMURUGAN
4 RAVIKUMAR MANDAL
5 SALOON MANI @ SUBRAMANI

Vs

STATE REP.BY [RESPONDENT]
DEPUTY SUPERINTENDENT OF POLICE,
SOUTH POLICE STATION,
ERODE TOWN SUB DIVISION,
ERODE DISTRICT.
CR.NO.648/2015.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.2848 of 2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in Spl.S.C.No.69/2016 on the file of Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 (Principal Sessions Court, Erode) by a Judgement dated 30.01.2017.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No.2848 of 2017 on the file of the High Court and upon hearing the arguments of M/S.C.S.SARAVANAN, Advocate for the petitioner and of MR.R.RAVICHANDRAN, Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

Heard both sides.

2. The Petitioners / Appellants / A.1 to A.5 have preferred the instant Criminal Appeal before this Court, being dissatisfied with the Judgment dated 30.01.2017 in Spl. S.C.No.69 of 2016 passed by the Learned Special Judge, Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Erode.

3. Earlier, the trial court while passing the Impugned Judgment in Spl.S.C.No.69 of 2016 dated 30.01.2017 had found the

Petitioners / Appellants / A.1 to A.5 guilty in respect of charge under Sections 147 and 294(b) of Indian Penal Code. Further, the Petitioners / Appellants / A.1, A.3 to A.5 were found guilty in respect of charge under Section 323 of Indian Penal Code. But, the 2nd Petitioner / 2nd Appellant / A.2 was found guilty in respect of the charge under Section 324 of IPC.

4.As a matter of fact the trial court had proceeded to observe in its judgment that the Respondent / Prosecution had filed to establish the charge framed against the 1st Petitioner / 1st Appellant / A.1 and 2nd Petitioner / 2nd Appellant / A.2 under Section 3(1)(r) & (s) of Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989 and acquitted them in respect of those charges.

5. In reality, the trial court had convicted the Petitioners / Appellants / A.1 to A.5 in respect of an offence under Section 147 of IPC and imposed a punishment of Six months Simple Imprisonment each and also imposed a fine of Rs.1,500/- in default of payment of fine, they were directed to undergo Simple Imprisonment for One month each. Moreover the Petitioners / Appellants/ A.1 to A.5 were convicted in respect of an offence under Section 294(b) of IPC and they were awarded with a punishment of One Month Simple Imprisonment each and were directed to pay a fine of Rs.1,000/- each in default of payment of fine, each were further directed to undergo One Week Simple Imprisonment.

6. Besides the above, the trial court had convicted the Petitioners / Appellants / A.1 to A.3 A.4 and A.5 in respect of an offence under Section 323 of IPC and imposed a punishment of Three Months Simple Imprisonment each and imposed a fine of Rs.1,000/- each in default of payment of fine, each of the Petitioners / Appellants were directed to undergo Simple Imprisonment for 15 days.

7. However, the 2nd Petitioner / 2nd Appellant/ 2nd Accused was convicted and sentenced to undergo Simple Imprisonment for a period of one year in respect of an offence under Section 324 of IPC and she was directed to pay a fine of Rs.3,500/- in default of payment of fine, she was directed to undergo Simple Imprisonment for further period of Two Months.

8. Challenging the Judgment of Conviction dated 30.01.2017 in S.C.No.69 of 2016 dated 30.01.2017 passed by the trial court, the Petitioners / Appellants / A.1 to A.5 have filed the present Appeal by taking a plea that the trial court had not taken into consideration of the evidence of P.W.1 (Both in chief and cross-examination) as to the place of occurrence, as to the consciousness of P.W.1 after the occurrence and as to the number of persons involved in the occurrence.

9. The Learned Counsel for the Petitioners / Appellants / A.1 to A.5 urges before this Court that P.W.1, before the trial court

had identified only the 1st Petitioner / 1st Appellant / A.1 and the 2nd Petitioner / 2nd Appellant / A.2 and further he categorically stated that other persons were unknown.

10. It is represented on behalf of the Petitioners / Appellants / A.1 to A5 that in regard to the identification of other accused, no Identification Parade was conducted by the Respondent / Prosecution. However, this vital aspect of the matter was not looked into by the trial court at the time of passing the impugned judgment.

11. Advancing his arguments, the Learned Counsel for the Petitioners / Appellants takes a stand that the date of occurrence was on 09.09.2015 and in the instant case, FIR was registered only on 11.09.2015 and the reason ascribed for the delay in lodging the complaint given by P.W.1 was a vague one.

12. The Learned Counsel for the Petitioners / Appellants contends that P.W.2 and P.W.6 are close relatives and hence they are interested witnesses and apart from that, P.W.4, P.W.5 and P.W.7 had turned 'Hostile'

13. The Learned Counsel for the Appellants projects a plea that P.W.1 had stated before the trial court that the object used by the 2nd Appellant / A.2 was an old one, but, the marked M.O.1 was totally a new one. In this regard, the trial court had not bestowed his due contention, which had resulted in serious miscarriage of justice.

14. The Learned Counsel for the Appellants brings it to the notice of this Court that in between the depositions of witnesses P.W.1, P.W.3, P.W.4 and P.W.6 in regard to the happening of occurrence there were contradictions and the same was not taken of by the trial court at the time of passing the impugned judgment.

15. The Learned Counsel for the Appellants strenuously projects an argument that an offence under Section 323 of IPC was not made out against the 1st Petitioner / 1st Appellant / A.1, Petitioners 3 to 5 / Appellants 3 to 5 / A.3 to A.5 and in fact, P.W.1 had not sustained any external injuries or any hurt. As a matter of fact, P.W.2, Doctor had deposed that the reported pain by P.W.1 was totally an imaginary one.

16. The Learned Counsel for the Appellants submits that the Respondent / Prosecution had failed to produce the correct M.O.1 (Iron ladle) which was used in the occurrence by the 2nd Appellant / A.2 in order to attract the offence under Section 324 of IPC. Furthermore, the M.O.1, viz., Iron ladle would not be considered as a dangerous weapon to attract an offence under Section 324 of IPC.

17. Lastly, it is the contention of the Learned Counsel for the Appellants that an offence under Section 147 of IPC was not made out against the Petitioners / Appellants / A.1 to A.5, since the members

of a group would not be said to have formed unlawful assembly when there was a sudden unpremeditated free fight between two groups.

18. In fact the sentence imposed upon the Petitioners / Appellants / A.1 to A.5 were directed to run concurrently. It is represented on behalf of the Petitioners / A.1 to A.5 that the Petitioners / Appellants remitted a total fine amount of Rs.20,000/- before the trial court to the credit Spl.S.C.No.69 of 2016.

19. Conversely, it is the submission of the Learned Government Advocate (Crl.Side) for the Respondent / Prosecution that in the main case on behalf of the Respondent / Prosecution Witnesses, P.W.1 to P.W.9 were examined and Exs.P.1 to P.16 were marked, also M.O.1 was marked. On behalf of the Petitioners/ Appellant / Accused / A.1 to A.5, Ex.D1 and D2 were marked.

20. In this connection, the Learned Government Advocate (Crl.Side) for the Respondent contends that the trial Court had appreciated the entire available oral and documentary materials and evidences on record and came to the resultant conclusion that the Petitioners / appellants / A.1 to A.5 were guilty in respect of the relevant offences and imposed with necessary punishments.

21. It cannot be gainsaid that filing of an 'Appeal' is a statutory right conferred upon the Petitioners / Appellants / A.1 to A.5 under Criminal Procedure Code and in the present case, the Petitioners / Appellants have exercised the said right in preferring the instant Appeal (as Aggrieved Persons) before this Court.

22. In Law, an 'Appeal' is continuation of original proceedings of the trial court, viz., Spl.S.C.No.69 of 2016. It cannot be forgotten that the filing of a Miscellaneous Petition seeking 'Suspension of Sentence' and to enlarge the Petitioners / Appellants / Accused on Bail forms an integral part of the main Appeal, in the considered opinion of this Court.

23. At this juncture, this Court has perused the numerous grounds raised in the 'Memorandum of Grounds of Appeal' filed by the Petitioners / Appellants and is of the considered view that the Petitioners / Appellants and is of the considered view that the Petitioners / Appellants have raised some substantial / tangible / arguable points, which require detail consideration in the hands of this court, at the time of final hearing of the main Appeal.

24. Be that as it may, in view of the fact that the Petitioners / A.1 to A.5 have preferred the instant Criminal Appeal before this Court and also this Court keeping in mind the prime fact that an 'Appeal' is a continuation of trial court's Original Proceedings and also bearing in mind yet another fact that the present Criminal Appeal is not likely to be taken up in the near future and also considering the attendant facts and circumstances of the case in an integral manner, at this stage, is inclined to suspend the substantial sentence of imprisonment alone and directs the release of the Petitioners / Appellants on each of them 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 Special Judge, Special Court for Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Erode and on further condition that they 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 Criminal Appeal.

Accordingly, this Miscellaneous Petition is ordered.

-sd/-
24/02/2017

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 SPECIAL JUDGE,
SPECIAL COURT FOR SCHEDULED CASTES AND
SCHEDULED TRIBES [PREVENTION OF \ATROCITIES]
ACT 1989, [PRINCIPAL SESSIONS COURT, ERODE].

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE DEPUTY SUPERINTENDENT OF POLICE,
SOUTH POLICE STATION,
ERODE TOWN SUB DIVISION,
ERODE DISTRICT.

+1C.C. to M/S.C.S.SARAVANAN Advocate on payment of necessary charges SR NO.3739

Order

in
CRL MP.2848/2017

in
CRL A.102/2017

Date :24/02/2017

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MK:27/02/2017