

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Eleventh day of April Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice M. VENUGOPAL

CRIMINAL MISCELLANEOUS PETITION No.4773 of 2017

IN CRL A.193/2017

1 GANESAN

[PETITIONERS]

2 K.VENKATESAN

3 S.KANNAN

4 K.CHANDRA

Vs

THE STATE OF TAMIL NADU,

[RESPONDENT]

THE DEPUTY SUPERINTENDENT OF POLICE,

VILLUPURAM SUB DIVISION,

VILLUPURAM TALUK POLICE STATION,

VILLUPURAM DISTRICT

CR.NO.410 OF 2016.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.193 of 2017 on the file of the High Court, the High Court will be pleased to suspend the sentence passed by the Learned Sessions Judge, Special Court for Exclusive Trial of Cases Registered Under the Schedule Caste and Schedule Tribe Prvention of Atrocities Act 1989 Villupuram in Special S.C.No.90 of 2016 dated 28.03.2017 and enlarge the petitioner on bail pending the disposal of the above Crl.A.No.193 of 2017

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.193 of 2017 on the file of the High Court and upon hearing the arguments of M/S.M.DEVARAJ, Advocate for the petitioner and of MR. K.MADHAN, 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.4 have preferred the instant Criminal Appeal before this Court (as aggrieved persons) as against the Judgment dated 28.03.2017 in Spl.S.C.No.90 of 2016 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. It comes to be known that the Petitioners / Appellants / A.1 to A.4 were found guilty for the charge punishable under Section 3(1)(r) and (s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and they were convicted and sentenced to undergo Simple Imprisonment for One Year each and they were directed to pay a fine of Rs.3,000/- each and in default they were directed to undergo Simple Imprisonment for Three Months each.

4. Further, the 1st Petitioner / 1st Appellant / A.1 was found guilty in respect of the charge punishable under Section 4 of the Tamil Nadu Women Harassment Act, 1998 and he was convicted and sentenced to undergo Simple Imprisonment for a period of One Year and further, he was directed to pay a fine of Rs.2,000/- and in default, he was further directed to undergo Simple Imprisonment for a period of Three Months.

5. As regards charge punishable under Section 352 of Indian Penal Code, the Petitioners / Appellants / A.1 to A.4 were found guilty and they were sentenced to undergo Simple Imprisonment for a period of Three Months each and they were directed to pay a fine of Rs.500/- and in default, they were directed to undergo Simple Imprisonment for 23 days.

6. In so far as the charge punishable under Section 506(ii) of Indian Penal Code, the Petitioners / Appellants / A.1 to A.4 were found guilty and they were convicted and sentenced to undergo Simple Imprisonment for One Year each and they were ordered to pay a fine of Rs.2,000/- each and in default, they were ordered to undergo Simple Imprisonment for Three Months each.

7. As a matter of fact, it is noted that the period already undergone by the Petitioners / Appellants / A.1 to A.4 were directed to be set off under Section 428 of Criminal Procedure Code, 1973 and punishments were ordered to run concurrently.

8. It is represented on behalf of the 1st Petitioner / 1st Appellant / A.1 that he had remitted a fine of Rs.7,500/- before the trial Court to the credit of Spl.S.C.No.90 of 2016. Likewise, the 2nd Petitioner / 2nd Appellant / A.2 was directed to pay a fine of Rs.5,500/- by the trial Court and the same paid before the trial Court. The 3rd Petitioner / 3rd Appellant / A.3 was directed to pay a fine of Rs.5,500/- and the same was paid before the trial Court. The 4th Petitioner / 4th Appellant / A.4 had also remitted a sum of Rs.5,500/- towards fine. In all, the fine amount of Rs.24,000/- was paid by the Petitioners / Appellants / A.1 to A.4.

9. The Petitioners / Appellants / A.1 to A.4 have preferred the instant Criminal Appeal before this Court by taking a plea that the Judgment of the trial Court in convicting them under various Sections of Law is incorrect, suffers from errors of jurisdiction and against Law, weight of evidence.

10. It is represented on behalf of the Petitioner / Appellants / A.1 to A.4 that the trial Court had failed to appreciate that the complaint given by P.W.1 was a fabricated version, which was lodged after unexplained delay of two days and in fact, the complaint had reached the Court after three days, which would show that much deliberations took place before the case was registered.

11. The Learned Counsel for the Petitioners / Appellants / A.1 to A.4 proceeds to take a plea that P.W.1 had admitted in her cross examination that there was no enmity or quarrel between the Petitioners / Appellants / A.1 to A.4 and herself and there was no interaction between them while they were working, but, this vital aspect of the matter was not borne in mind by the trial Court at the time of passing the impugned Judgment.

12. The Learned Counsel for the Petitioners / Appellants / A.1 to a.4 contends that in the instant case, the ingredients of offence under Sections 352 and 506(ii) of IPC were not made out and the contra finding rendered by the trial Court is undoubtedly a perverse one in the eye of Law.

13. Advancing his arguments, the Learned Counsel for the Petitioners / Appellants / A.1 to A.4 projects an argument that P.W.1 and P.W.2 in their depositions had not specifically stated that who had bet them and instead they had generally stated about the beating and the quarrel, further, regarding the threat, nothing was spoken about the P.W.2. As a matter of fact, P.W.1 and P.W.2 were wife and husband and they were only interested persons. That apart, P.W.5 had not spoken about the assault and in fact he had stated in his evidence that he had not seen the incident although he was present at the place of occurrence.

14. In short, the core contention advanced on behalf of the Petitioners / Appellants / A.1 to A.4 is that in the absence of any corroborative evidence relying on the evidence of P.W.1 is unsafe and that the trial Court had committed serious error in this regard and consequently, the 'Judgment of Conviction' rendered by the trial Court is liable to be set aside, in the interest of justice.

15. Conversely, it is the submission of the Learned Government Advocate (Crl.Side) for the Respondent / Prosecution that before the trial Court on behalf of the Respondent / Prosecution, witnesses P.W.1 to P.W.10 were examined and Exs.P.1 to P.10 were marked. The trial Court upon examination of oral and documentary evidence and after analysing the same with meticulous care and caution had found the Petitioners / Appellants / A.1 to A.4 guilty in respect of the offences mentioned and imposed necessary punishments thereto.

16. At this juncture, this Court aptly points out that the 'Filing of an Appeal' by the Petitioners / Appellants/ A.1 to A.4 is a substantive right showered under the relevant provision of Criminal Procedure Code. Admittedly, 'Appeal Proceedings' is a continuation of Original Proceedings and the Petitioners / Appellants / A.1 to A.4 have exercised their statutory right of preferring the instant Criminal Appeal before this Court. In this connection, this Court pertinently points out that a mere running of the eye over the various grounds set out in the 'Memorandum of Appeal' projected by the Petitioners / Appellants / A.1 to A.4 unerringly points out that the Petitioners / Appellants / A.1 to A.4 have raised some tangible / arguable / substantial points, which require detail rumination in the hands of this Court at the time of final hearing of the main Appeal.

17. Be that as it may, in view of the fact that the Petitioners / Appellants / A.1 to A.4 have exercised their statutory right of preferring the instant Criminal Appeal before this Court and also this Court taking note of the yet another fact that the present Criminal Appeal is not likely to be taken up for hearing in the near future and also considering the facts and circumstances of the present 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 Petitioners/ Appellants/ A.1 to A.4 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 Sessions Judge, Special Court for Exclusive Trial of Cases Registered under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, Villupuram and on further condition that the Petitioners / Appellants / A.1 to A.4 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/-
11/04/2017

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,
SPECIAL COURT FOR EXCLUSIVE TRIAL OF CASES
REGISTERED UNDER SCHEDULED CASTES AND
SCHEDULED TRIBES (PREVENTION OF ATROCITIES)
ACT, 1989, VILLUPURAM.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE DEPUTY SUPERINTENDENT OF POLICE,
VILLUPURAM SUB DIVISION, VILLUPURAM TALUK
POLICE STATION, VILLUPURAM DISTRICT

C.C. to M/S.M.DEVARAJ Advocate on payment of necessary charges
Sr.6588

Order

in
CRL MP.4773/2017

in
CRL A.193/2017

Date :11/04/2017

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rvr 12/04/2017