IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Nineteenth day of April Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice M. VENUGOPAL

CRIMINAL MISCELLANEOUS PETITION No.4846 of 2017

IN CRL A.200/2017

1 THANGAMANI, [PETITIONERS/APPELLANTS]
2 KARUNANIDHI,
3 KALIAMMAL,

Vs

STATE REP. BY, [RESPONDENT]
INSPECTOR OF POLICE,
PADALUR POLICE STATION,
PERAMBALUR,
PERAMBALUR DISTRICT.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal APPEAL No.200 OF 2017 on the file of the High Court, the High Court will be pleased to Suspend the sentence in S.C.No.18 of 2012 on the file of Mahila Court, Perambalur, and release the petitioners on bail pending disposal of the Crl.A.No.200 of 2017.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.200 of 2017 on the file of the High Court and upon hearing the arguments of MR.V.SELVARAJ, FOR M/S.D.JAYASINGH, Advocate for the petitioner and of Mr.K.MADAN, Government 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.3 have focused the instant Criminal Appeal before this Court, being dis-satisfied with the Judgment dated 24.03.2017 in S.C.No.18 of 2012 passed by the Learned Sessions Judge, Mahila Court, Perambalur.

3. The Learned Sessions Judge, Mahila Court, Perambalur while passing the Impugned Judgment had convicted and sentenced the 1st Petitioner / 1st Appellant / A.1 in respect of the offence under Sections 294(b) 307(2 Counts) and 506(i) of IPC and sentenced him to undergo Three Months Simple Imprisonment in respect of the offence under Section 294(b) and also imposed a fine of Rs.1,000/- in default of payment of fine, he was directed to undergo further One Month Simple Imprisonment.

4. Insofar as the offence under Section 307(2 counts) is concerned, the 1st Petitioner / 1st Appellant / A.1 was sentenced to undergo Seven Years Rigorous Imprisonment and he was imposed with a fine of Rs.3,000/- (Two Counts) (Rs.3,000/- + Rs.3,000/- totaling in all Rs.6,000/-) and in default of payment of said fine amount, he was directed to undergo further One Year Rigorous Imprisonment.

5. Insofar as the offence under Section 506(i) of IPC is concerned, the 1st Petitioner / 1st Appellant / A.1 was sentenced to undergo a Simple Imprisonment for Two years and further, he was imposed with a fine of Rs.3,000/- in default of payment of fine, he was directed to undergo further Six Months Simple Imprisonment.

6. As regards, the 2nd Petitioner / 2nd Appellant / A.2, the trial Court had sentenced him to undergo Seven Years Rigorous Imprisonment in respect of an offence under Section 307 of IPC and further he was imposed with a fine of Rs.3,000/-, in default of payment of fine, he was directed to undergo further One Year Rigorous Imprisonment.

7. In regard to the 3rd Petitioner / 3rd Appellant / A.3, she was sentenced to undergo Simple Imprisonment for Three Years in respect of an offence under Section 324 of IPC (two counts) and she was imposed with a fine of Rs.2,000/- (each for two counts) (Rs.4,000/- in all) and in default of payment of fine, she was directed to undergo further Six Months Simple Imprisonment.

8. It comes to be known that the offence under Sections 148 and 354 of IPC were not established on the side of the Respondent / Prosecution in respect of the 1st Petitioner / 1st Appellant / A.1 and he was acquitted by the trial Court in respect of those offence under Section 235(1) of Cr.P.C., In regard to the offence under Sections 148 and 294(b) of IPC levelled against the 2nd Petitioner / 2nd Appellant / A.2, the Prosecution had not established the same with proper evidence and documents and ultimately the 2nd Petitioner/2nd accused was acquitted under Section 235(1) of Cr.P.C.,

9. The 3rd Petitioner / 3rd Appellant / 3rd Accused was acquitted in respect of the offence under Sections 148, 294(b),326, 307 read with Section 34 of Indian Penal Code by the trial Court under Section 235(1) of Cr.P.C., As regards the offence levelled against the A.4 and A.5 in respect of the offence under Sections 147, 294(b), 323 (two counts) 307 read with Section 34 of Indian Penal Code, the trial Court had acquitted them, since the Respondent / Prosecution had not established their case with proper evidence and documents. In respect of the punishments awarded to the Petitioners / Appellants / A.1 to A.3, they were directed to run concurrently. The period already undergone by the Petitioners / Appellants / A.1 to A.3 were directed to be set off under Section 428 of Indian Penal Code.

10. It transpires that a total fine amount of Rs.17,000/- was imposed by the trial Court and it is brought to the notice of this Court that the same was paid by the Petitioners / Appellants / A.1 to A.3 before the trial Court to the credit of S.C.No.18 of 2012. Further, it is represented on behalf of the Petitioners that the

compensation amount ordered to be determined and paid to P.Ws.1 to 3 for the physical and mental agony suffered by them, the same was not quantified by the Perambalur District Legal Services Authority till date. This fact is not disputed on the side of the Respondent Prosecution.

11. The Learned Counsel for the Petitioners / Appellants / A.1 to A.3 contends that in the instant case, the date of occurrence was on 27.02.2011 at 7.00 p.m. and it is the claim of P.Ws.1 to 3 that they were attacked by the accused, as a result of which they suffered injuries and were admitted into hospital on the same day. However, the First Information Report was dated 01.03.2011 and in fact, on the side of the Respondent / Prosecution no reason was ascribed before the trial Court for the delay in lodging the First Information Report.

12. The Learned Counsel for the Petitioners / Appellants proceeds to take a plea that not even a single independent witness had corroborated the version of the prosecution in regard to the purported attack made by the accused against P.W.1 to P.W.3. Further, it is represented on behalf of the Petitioners / Appellants / A.1 to A.3 that barring P.Ws.1 to 3 all other independent witnesses were treated as hostile.

13. The Learned Counsel for the Petitioners / Appellants / A.1 to A.3 projects an argument that P.W.13 had not explained the reason for the delay in filing the First Information Report and also that the said witness had not recovered the alleged blood stained cloths. The Learned Counsel for the Petitioners / Appellants / A.1 to A.3 urges before this Court that there is a contradiction / discrepancy / variance between the evidence tendered by P.Ws.1 to 3 and in reality, the trial Court had committed error in assessing their evidence in a proper and real perspective.

14. Conversely, it is the submission of the Learned Government Advocate (Crl.Side) for the Respondent / Prosecution that before the trial Court in the main case on behalf of the Respondent / Prosecution witnesses, P.W.1 to P.W.13 were examined, Exs.P.1 to P.20 and M.O.1 to M.O.3 were marked. Further, on the side of the Petitioners / Appellants, no one was examined as a defence witness and also that no document was marked.

15. The Learned Government Advocate (Crl.Side) for the Respondent / Complainant brings it to the notice of this Court that the trial Court on an analysis of the entire gamut of the oral and documentary evidence available on record came to the resultant conclusion that the Petitioners / Appellants / A.1 to A.3 were guilty in respect of the relevant offence and they were imposed with necessary punishments.

16. It cannot be gainsaid that the Petitioners / Appellants / A.1 to A.3 have filed the instant Criminal Appeal before this Court, as affected persons in respect of the Judgment dated 24.03.2017 in S.C.No.18 of 2012 on the file of the trial Court. The Petitioners / Appellants / A.1 to A.3 have exercised their statutory right of preferring the present Appeal before this Court, as envisaged under

Criminal Procedure Code.

17. It is relevant for this Court to make a significant mention that filing of the Miscellaneous Petition by the concerned persons seeking 'Suspension of Sentence to release them on Bail' is an integral part of the main Appeal.

18. It is an axiomatic principle in Law that an 'Appeal' is the continuation of original proceedings of the trial Court. In this Connection, this Court has perused the grounds set out in the 'Memorandum of Appeal' filed by the Petitioners / Appellants / A.1 to A.3 and is of the earnest opinion that they require detail rumination in the hands of this Court, at the time of final hearing of the main Appeal.

19. Be that as it may, considering the fact that the Petitioners / Appellants / A.1 to A.3 have preferred the instant Criminal Appeal before this Court and also this Court keeping in mind a primordial fact that an Appeal is continuation of original proceedings and also taking note of the yet another fact that the present Criminal Appeal is not likely to be heard in the near future and also considering the attendant facts and circumstances of the present case in an encircling 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 Learned Sessions Judge, Mahila Court, Perambalur 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 Appeal.

Accordingly, this Miscellaneous Petition is ordered.

-sd/-
19/04/2017

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,
MAHILA COURT, PERAMBALUR.

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

3 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHIRAPALLI.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
PADALUR POLICE STATION,
PERAMBALUR, PERAMBALUR DISTRICT.

+1 C.C. to M/S.D.JAYASINGH Advocate on payment of necessary charges-Sr.7100

Order

in
CRL MP.4846/2017

in
CRL A.200/2017

Date :19/04/2017

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format
ths : 19.04.2017