

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Eighteenth day of April Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice M. VENUGOPAL

CRIMINAL MISCELLANEOUS PETITION No.5394 of 2017

IN CRL A.222/2017

1 RAVI
2 IYAPPAN

[PETITIONERS]

Vs

STATE REP.BY ITS
INSPECTOR OF POLICE,
T-9, PATTABIRAM POLICE STATION,
PATTABIRAM, CHENNAI.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.222 of 2017 on the file of the High Court, the High Court will be pleased to grant an order of suspension of sentence pursuant to the Judgment dated 24.03.2017 passed in S.C.No.4 of 2015 on the file of the learned Principle District and Sessions Court, Thiruvallur pending disposal of the above Crl.A.No.222 of 2017.

Order : This petition coming on for orders upon perusing the petition and Memorandum of Grounds in Crl.A.No.222 of 2017 On the file of the High Court and upon hearing the arguments of M/S.P.PRINCE PREMKUMAR, Advocate for the petitioner, and of MR. K.MADHAN, Govt. Advocate(Crl. Side)the court made the following order:-

Heard both sides. No counter is filed on behalf of the Respondent / Prosecution.

2. The Petitioners / Appellants / A.1 and A.2 have preferred the instant Criminal Appeal before this Court (as aggrieved persons) as against the Judgment dated 24.03.2017 in S.C.No.4 of 2015 passed by the Learned Principal District and Sessions Judge, Thiruvallur.

3. The Learned Principal District and Sessions Judge, Thiruvallur while passing the impugned Judgment on 24.03.2017 in S.C.No.4 of 2015 at Paragraph No.26 had observed that 'Considering the present case facts, circumstances, deposition of witnesses and the records, the acquisition levelled against the Accused Nos.1 and 2 (the Petitioners / Appellants) under Section 3 of Tamil Nadu Properties (Prevention of Damage and Loss) Act, 1992 was proved beyond reasonable doubt on the side of the Prosecution' and found them guilty and sentenced them to undergo One Year Rigorous

Imprisonment each in respect of offence under Section 3 of Tamil Nadu Properties (Prevention of Damage and Loss) Act, 1992 and also imposed a fine of Rs.3,000/-each, in default of payment of fine, the Petitioners / Appellants (A.1 and A.2) were directed to undergo further Three Months Rigorous Imprisonment. Moreover the period already undergone by the Petitioners / Appellants / A.1 and A.2 were directed to set off under Section 428 of Cr.P.C.,

4. The Petitioners / Appellants have filed the Criminal Miscellaneous Petition No.5394 of 2017 in CrI.A.No.222 of 2017 seeking for an 'Order of Suspension of Sentence' pursuant to the Judgment dated 24.03.2017 in S.C.No.4 of 2015 passed by the trial Court.

5. The Learned Counsel for the Petitioners / Appellants contends that the story of the Respondent / Prosecution is that on 20.08.2009 at about 4.30 p.m. without obtaining permission from the Government, the Petitioners / Appellants along with one Sambandam (deceased) were jointly cutting trees belonging to the National Highways Department situated at Amudhur Medu Main Road, Near Valliammal Matriculation School and thereby caused loss for Rs.18,000/- to the Government.

6. Advancing his arguments, the Learned Counsel for the Petitioners submits that the trial Court had failed to take into consideration that the Respondent / Prosecution had failed to produce relevant records to show that the trees in question belong to the Government Department and even photographs to show that the trees were cut were not produced by the Respondent / Prosecution.

7. The Learned Counsel for the Petitioners / Appellants takes a stand that the cut down trees were not seized by the Respondent / Prosecuting Agency and they were not produced, besides the fact that they were not marked as material objects in the main case.

8. In effect, the plea on the side of the petitioners / A.1 and a.2 is that the trial court had failed to appreciate the evidence of prosecution witnesses and Exhibits so marked in a proper and real perspective.

9. Conversely, it is the submission of the Learned Government Advocate (CrI.Side) for the Respondent / Prosecuting Agency that before the trial Court on behalf of the Respondent / Prosecution nearly Eight Witnesses namely, P.W.1 to P.W.8 were examined and Exs.P.1 to P.5 were marked. Also, M.O.1 and M.O.2 were marked. As a matter of fact, the trial Court had analysed the evidence of the prosecution witnesses and the materials available on record and ultimately found the Petitioners / Appellants guilty in respect of an offence under Section 3 of Tamil Nadu Properties (Prevention of Damage and Loss) Act, 1992 and imposed necessary punishments.

10. It is an axiomatic principle in Law that filing of an 'Appeal' is a right given to the accused as envisaged under the Criminal Procedure Code. The Petitioners / Appellants / A.1 and A.2 have exercised their right of preferring the instant Criminal Appeal

No.222 of 2017 before this Court. No wonder filing of a Miscellaneous Petition seeking 'Suspension of Sentence and to enlarge Concerned Accused on Bail' forms an integral part of the main Appeal.

11. Furthermore, at this stage, this Court has perused the grounds raised by the Petitioners/ Appellants / A.1 and A.2 in the 'Memorandum of Grounds of Appeal' and is of the earnest view that they require a detail deliberations in the hands of this Court at the time of hearing the main Appeal.

12. Be that as it may, in view of the fact that the Petitioners / Appellants / A.1 and A.2 have exercised the statutory right of filing the present Appeal before this Court and also this Court bearing in mind a prime fact that an 'Appeal' is a continuation of original proceedings in Law and also keeping in mind yet another pivotal fact that the present Criminal Appeal is not likely to be heard in the near future and also considering the facts and circumstances of the instant case in a cumulative fashion, at this juncture, 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 Principal District and Sessions Judge, Thiruvallur 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 until further orders.

Accordingly, this Miscellaneous Petition is ordered.

-sd/-
18/04/2017

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 PRINCIPAL DISTRICT AND
SESSIONS JUDGE, THIRUVALLUR

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 INSPECTOR OF POLICE,
T-9, PATTABIRAM POLICE STATION,
CHENNAI.

C.C. to M/S.P.PRINCE PREMKUMAR Advocate on payment of necessary
charges

Order

in
CRL MP.5394/2017

in
CRL A.222/2017

Date :18/04/2017

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

rvr 19/04/2017