

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Thirtieth day of January Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice M. VENUGOPAL

CRIMINAL MISCELLANEOUS PETITION No.667 of 2017

IN CRL A.26/2017

1 TAMILARASAN,
2 MURUGAMMAL,

[PETITIONER/APPELLANT/ACCUSED]

Vs

THE STATE OF TAMIL NADU,
REP. BY INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
PENNAGARAM, DHARMAPURI DISTRICT.
CR.NO.238 OF 2015
(MAHENDRAMANGALAM POLICE STATION)

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal APPEAL No.26 OF 2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed in the judgment dated 05.01.2017 in Spl. Sessions Case No.7 of 2016 on the file of the learned Fast Track Mahalir Court, Dharmapuri and to enlarge the petitioners on bail, pending disposal of the Criminal A.No.26 of 2017.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.153 of 2015 on the file of the High Court and upon hearing the arguments of MR.R.SELVAKUMAR, 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.R.Selvakumar, Learned counsel for the Petitioners/Appellants and Mr.R.Ravichandran, Learned Government Advocate (Crl. Side) for the Respondent/Complainant.

2.The Petitioners/Appellants/A1 and A2 have preferred the instant Criminal Appeal before this Court (as aggrieved persons), as against the Judgment dated 05.01.2017 in Spl.S.C.No.7 of 2016 passed by the Learned Sessions Judge, (Fast Track Mahila Court), Dharmapuri.

3.Earlier, the trial Court, in the Judgment in Spl.S.C.No.7 of 2016 dated 05.01.2017, found the 1st Petitioner/1st Appellant/A1 guilty in respect of an offence under Section 11(iv) read with Section 12 of the Protection of Children From Sexual Offences Act, 2012 and imposed him upon a punishment of three months Rigorous Imprisonment and also directed him to pay a fine of Rs.1,000/-, in default of payment of

fine, he was directed to undergo further one month Simple Imprisonment.

4. In so far as the 2nd Petitioner/2nd Appellant/A2 is concerned, the trial Court found him guilty under Section 306 I.P.C. and awarded him a punishment of five years Rigorous Imprisonment and further, directed him to pay a fine of Rs.1,000/-, in default of payment of said fine amount, he was directed to undergo three months imprisonment.

5. The Learned Counsel for the Petitioners/Appellants/A1 and A2 submits that the Petitioners/Appellants/A1 and A2 have focussed the present Criminal Appeal before this Court as against the Judgment dated 05.01.2017 in Spl.S.C.No.7 of 2016 passed by the trial Court, mainly contending that the trial Court had failed to take into account the evidence adduced by various witnesses let in on the side of the Respondent/Prosecution.

6. The Learned Counsel for the Petitioners/Appellants urges before this Court that the trial Court had erroneously convicted the 1st Petitioner/1st Appellant/A1 for giving letter to the deceased and in fact, there was no link to the act of giving a letter to the deceased and that of the ingredients in respect of offences prescribed under Section 11(iv) of the Protection of Children From Sexual Offences Act, 2012.

7. The Learned Counsel for the Petitioners/Appellants takes a stand that the trial Judge had not analysed the evidence of Prosecution witnesses in a proper and real perspective and moreover, in the instant case, most of the witnesses are family members, relatives or friends. In short, it is the stand of the Petitioners/Appellants/A1 and A2 that the trial Court was swayed away by the aspect of 'human sympathy' viz., a school girl had committed suicide.

8. The Learned Counsel for the Petitioners/Appellants projects an argument that the trial Court had failed to take into account that even in the complaint lodged by the deceased (school girl), in her subsequent statements, there was a categorical statement that the affair or an attempted affair was on for more than one year, but, there was no whisper or murmur about the same by the complainant or any one of her family members.

9. Lastly, it is contended that the trial Court had failed to look into account a very important fact though P.W.14 had spoken about the fact that the 2nd Petitioner/2nd Appellant/A2 had scolded the deceased in 'Telugu', the Prosecution had not elicited what was the exact Telugu word spoken by the 2nd Petitioner/2nd Appellant/A2.

10. It is represented on behalf of the Petitioners/Appellants that they remitted a total fine amount of Rs.2,000/- before the trial Court to the credit of Spl.S.C.No.7 of 2016.

11. Per contra, it is the submission of the Learned Government Advocate (Crl. Side) for the Respondent that in the main case before the trial Court on behalf of the Prosecution, witnesses P.W.1 to

P.W.27 were examined and Exs.P1 to P23 were marked and M.O.1 was marked. On the side of the Appellants/A1 & A2, no one was examined as a defence witness and no document was marked. On a meticulous analysis of entire oral and documentary evidence available on record, the trial Court had ultimately found the 1st Petitioner/1st Appellant/A1 guilty in respect of an offence under Section 11(iv) read with Section 12 of the Protection of Children From Sexual Offences Act, 2012 and also found the 2nd Petitioner/ 2nd Appellant/A2 guilty in respect of an offence under Section 306 I.P.C. and imposed the necessary punishments.

12.It is to be noted that 'Filing of an Appeal' is a continuation of Original Proceedings of the trial Court (viz., against Spl.S.C.No.7 of 2016). As a matter of fact, the Petitioners/Appellants/A1 and A2 have exercised their statutory right of preferring the present Appeal as envisaged under Criminal Procedure Code. Undoubtedly, the 'Filing of a Miscellaneous Petition' seeking 'Suspension of Sentence' forms an integral part of main Appeal in Criminal Procedure Code. In this connection, this Court has perused the numerous grounds raised on behalf of the Petitioners/Appellants in the 'Memorandum of Grounds of Appeal' and is of the considered view that the Petitioners/Appellants have raised some tangible/substantial, arguable points which require detail rumination in the hands of this Court at the time of final hearing of the Main Appeal.

13.It is to be pointed out that when a person is sentenced to 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 in **Kiran Kumar V. State of M.P., Judgment Today 2000 Supp. (1) SC 208.**

14.Inasmuch as the Petitioners/Appellants have filed the instant Appeal before this Court and this Court, taking note of an important fact that an 'Appeal' is a continuation of Original Proceedings and also, this Court, by keeping in mind the attendant facts and circumstances of the present case in a conspectus fashion and also considering the fact that the present Criminal Appeal is not likely to be heard in the near future, at this stage, is inclined to suspend the Substantial Sentence of Imprisonment alone and orders the release of the Petitioners/Appellants/A1 and A2 on each of them 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 Sessions Judge, Fast Track Mahila Court, Dharmapuri and on further condition that they 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.

15. Accordingly, the Crl.M.P.No.667 of 2017 is ordered, on above terms.

-sd/-
30/01/2017

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,
FAST TRACK MAHILA COURT, DHARMAPURI.

2 THE SUPERINTENDENT,
CENTRAL PRISON, (WOMEN), VELLORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
PENNAGARAM, DHARMAPURI DISTRICT.
(MAHENDRAMANGALAM POLICE STATION)

+1 C.C. to M/S.R.SELVAKUMAR Advocate on payment of necessary charges-Sr.1872

Order

in
CRL MP.667/2017

in
CRL A.26/2017

Date :30/01/2017

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