

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Fifth day of June Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice M. VENUGOPAL

CRIMINAL MISCELLANEOUS PETITION No.6746 of 2017

IN CRL A.282/2017

KOKILAN @ CHAKRAVARTHI,

[PETITIONER/APPELLANT]

Vs

STATE BY:

[RESPONDENT]

INSPECTOR OF POLICE,
GOBICHETTIPALAYAM
POLICE STATION,
ERODE DISTRICT.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.282/2017 on the file of the High Court, the High Court will be pleased to suspend the operation of sentence of imprisonment as imposed in the above said S.C.No.157 of 2016 on the file of the Learned Additional Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Erode enclose him on bail until disposal of the above said Criminal Appeal and pass such further orders.[IN CRL.MP.NO.6746/2017]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Appeal No.282/2017 on the file of the High Court and upon hearing the arguments of M/S.R.RAVINDRAN Advocate for the petitioner and of MR.K.MATHAN Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

Heard both sides.

2. The Petitioner / Appellant has preferred the instant Criminal Appeal before this Court (as aggrieved person) as against the Judgment dated 10.04.2017 in S.C.No.157 of 2016 passed by the Learned Additional Sessions Judge, Mahila Court, (Fast Track) Erode .

3. Earlier, the Learned Additional Sessions Judge, Mahila Court (Fast Track) Erode while passing the Impugned Judgment in S.C.No.157 of 2016 had resultantly found the Petitioner / Appellant / Accused guilty in respect of an offence under Section 324 (II Counts) of IPC and imposed a punishment of Two Years Rigorous Imprisonment for each count. That apart, the Petitioner / Appellant was directed to pay a fine of Rs.1,000/- for each count, in default of payment of fine, he was directed to undergo Two Months Simple Imprisonment. Moreover, he was found guilty in respect of an offence under Section 326 of IPC

and he was imposed with a punishment of Rigorous Imprisonment for a period of Five Years, besides the fine of Rs.10,000/- and in default of payment of fine, he was further directed to undergo Two Years Simple Imprisonment.

4. It transpires that the Petitioner / Appellant / Accused was found not guilty in respect of offences under Section 294(b) (4 Counts), 341(4 Counts) 307 (Part 2) (1 Count) of IPC and he was acquitted in respect of those charges.

5. Being dis-satisfied with the Judgment of Conviction rendered by the trial Court in S.C.No.157 of 2016 dated 10.04.2017, the Petitioner / Appellant / Accused has focussed the instant Criminal Appeal primarily by taking a plea that the Judgment of the trial Court is per se not maintainable both on facts and Law.

6. According to the Learned Counsel for the Petitioner / Appellant, the trial Court had taken an incorrect view that P.W.1, P.W.2, P.W.3 and P.W.4 had corroborated each other's evidence in respect of the injuries caused to P.Ws.1 to 3. In short, it is the plea of the Petitioner / Appellant that the trial Court had failed to consider the evidences of P.Ws.1 to 4 and P.W.11 in a proper and real perspective.

7. Advancing his arguments, the Learned Counsel for the Petitioner / Appellant contends that in the instant case, no explanation was offered on the side of the Respondent / Prosecuting agency as to who informed P.W.1 that Police came immediately after the purported incident and arrested the accused.

8. The Learned Counsel for the Petitioner / Appellant projects an argument that the trial Court had failed to observe in its Judgment in as much as P.Ws.1 to 4, and P.W.11 belong to the same family, on successive occasions during the cross examination of said witness, the said witnesses had attempted to improve their versions. In this connection, the Learned Counsel for the Petitioner / Appellant brings it to the notice of this Court that P.W.1 had admitted that there was previous enmity between their family and the Petitioner / Appellant / Accused, as the accused had married P.W.4 in spite of the fact that she hails from a different community. It is to be noted that the other witnesses had deposed that initially there was an enmity, later it was set right.

9. The core contention taken on behalf of the Petitioner / Appellant is that a conjoint reading of evidences P.W.1 to 4, P.W.11 would unerringly point out that real endeavour of P.W.1 and her family to hide the issue of enmity with the Petitioner / Appellant / Accused from the Court. However this vital aspect of the matter was not rightly appreciated by the trial Court.

10. Expatiating his submission, the Learned Counsel for the Petitioner / Appellant submits that the trial Court had failed to take into account that P.W.8, who examined P.W.1 and P.W.2 had deposed that P.W.2 (Baskaran) was treated as an outpatient in spite of

the injury being purported of a grievous nature. Moreover, P.W.2 was able to leave the very night of the incident from the hospital and coordinate with the Police Authorities inspite of allegedly suffered a knife injury on his neck.

11. The Learned Counsel for the Petitioner / Appellant brings it to the notice of this Court that the story of the Respondent / Prosecution was that no member of the accused family was bold enough to try and stop the Accused from making alleged attacks with the stones and knife. However, the fact of the matter is that P.W.2 (Baskar) was strong enough to walk away from a greivous knife wound on his neck has not been appreciated by the trial Court, in that P.W.1 to P.W.4 and P.W.11 were suppressing any action taken on their part to physically fight with the Accused. In short, the stand of the Petitioner is that the aforesaid behaviour of P.W.2 immediately after the incident and during the investigation was not considered by the trial Court.

12. At this juncture, the Learned Counsel for the Petitioner / Appellant informs this Court that the Respondent / Prosecution had not chosen to treat P.W.9 and P.W.10 as 'Hostile Witnesses' inspite of their evidence in chief examination being quite contrary to the case of prosecution. Significantly, the Prosecution had chosen to treat P.W.8 as 'Hostile Witnesses' on the ground that P.W.8 had not deposed that the injuries on P.Ws.1 to 3 could be caused due to the weapons allegedly used by the Accused. However, the trial Court has incorrectly held that the evidence of P.W.8 corroborates the case of the Prosecution.

13. The Learned Counsel for the Petitioner / Appellant points out that in the instant case, the Prosecution had not examined one Senthil, who was present at the scene of occurrence. Also that the Respondent / Prosecution had not examined one Narmadapriyanga, wife of P.W.3, who was said to be present all throughout the alleged incident and treatment at the Gobi Government Hospital, Erode Government Hospital and the Private Hospital.

14. The Learned Counsel for the Petitioner / Appellant proceeds to state that in the instant case, there is no medical evidence to establish that the Petitioner / Appellant was intoxicated at the time of occurrence, but, the trial Court had erroneously observed that it was not possible for an intoxicated person to be stopped in his physical assault. Further more, the trial Court had observed that an intoxicated person can easily assault 4 victims and this observation of the trial Court would point out that the trial Court was in a predisposed mind in convicting the Petitioner / Appellant / Accused without analysing the available evidence on record.

15. On the side of the Petitioner / Appellant a plea is taken that there was no explanation on the side of the Respondent / Prosecution as to why no independent persons were able to be cited as witnesses to the seizure and in fact the evidence of P.W.1 to P.W.4, P.W.11, P.W.12, P.W.5, P.W.6 and P.W.13 would show that the eagerness of the family of P.W.1 to depose against the Petitioner / Appellant.

16. The Learned Counsel for the Appellant contends that the trial Court had failed to consider that the investigation into the present case by the prosecution was done in the presence of P.W.2 and further when P.W.15 (I.O.) was aware of the injury on the Petitioner / Appellant / Accused, he ought to have investigated, gathered materials on the same and failure in this regard by the Investigation Officer is certainly a favourable circumstance to and in favour of the Petitioner / Appellant / Accused.

17. The Learned Counsel for the Petitioner / Appellant emphatically points out that the case of the prosecution was rested on the alleged violence caused by the Petitioner / Appellant / Accused to P.W.4 that caused the chain of events to result in the alleged occurrence and in fact P.Ws.1 to 3 and P.W.11 had deposed that the Petitioner / Accused had allegedly twisted the leg of P.W.4, but, surprisingly P.W.4 had omitted to depose about the said fact before the trial Court and it is a fatal one.

18. It is represented on behalf of the Petitioner / Appellant that the Petitioner / Appellant / Accused had remitted a total fine of Rs.12,000/- (Rupees Twelve Thousand only) before the trial Court on the date of Judgment, viz.,10.04.2016 itself in S.C.No.157 of 2016.

19. Per contra, it is the submission of the Learned Government Advocate (Crl.Side) for the Respondent / Accused that in the present case before the trial Court on behalf of the Respondent / Accused, Witnesses P.W.1 to P.W.17 were examined and Exhibits P.1 to P.26 were marked, also M.O.1 to M.O.10 were marked and that the trial Court on an appreciation of entire oral and documentary evidence on record had found the Petitioner / Appellant guilty in respect of offences under Sections 324(II Counts) and 326 of IPC and imposed necessary punishments, however, the trial Court had acquitted the Petitioner in respect of offences under Sections 294(b) (4 Counts), 341 (4 Counts) and 307 (Part II) (1 Count) of IPC.

20. It cannot be gainsaid that in Law, filing of an 'Appeal' is a continuation of original proceedings. Indeed, the Petitioner / Appellant has exercised his statutory right of preferring an appeal before this Court as an aggrieved person, as envisaged under Criminal Procedure Code. At this stage, this Court has perused the various grounds raised in the 'Memorandum of Grounds of Appeal' filed by the Petitioner / Appellant / Accused and is of the considered view that they require detail rumination by this Court at the time of final hearing of the Appeal.

21. In as much as the Petitioner / Appellant / Accused has preferred the instant Criminal Appeal before this Court (As aggrieved person) and also this Court keeping in mind a primordial fact that an 'Appeal is continuation of Original Proceedings' in Law and also bearing in mind another important fact that the present Criminal Appeal is not likely to be taken up for the final hearing in the near future and considering the facts and circumstances of the present case in an integral manner, at this stage, is inclined to

suspend the substantial Sentence of Imprisonment alone and directs the release of the Petitioner/ Appellant on his 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 Additional Sessions Judge, Mahila Court (Fast Track Mahila Court) Erode and on further condition that he 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/-

05/06/2017

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 ADDITIONAL SESSIONS
JUDGE, MAHILA COURT[FAST TRACK MAHILA COURT]ERODE

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON,COIMBATORE

4 THE INSPECTOR OF POLICE,
GOBICHETTIPALAYAM POLICE STATION,
ERODE DISTRICT.

+1 C.C. to M/S.R.RAVINDRAN Advocate on payment of necessary charges SR.NO. 9737

Order

in
CRL MP.6746/2017

in
CRL A.282/2017

Date :05/06/2017

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RD 05/06/2017