



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Nineteenth day of December Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice A.M.BASHEER AHAMED

CRL MP(MD) Nos.11485 & 11486 of 2017
IN
CRL A(MD) No.507 of 2017

PANDISELVI

... PETITIONER/PETITIONER/ACCUSED NO.2
IN CRL MP(MD) No.11485 of 2017

KUMAR

... PETITIONER/PETITIONER/ACCUSED NO.1
IN CRL MP(MD) No.11486 of 2017

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE,
PERAIYUR POLICE STATION,
(PERAIYUR CIRCLE)
(IN CRIME NO.163 OF 2014)

... RESPONDENT/RESPONDENT/COMPLAINANT
IN BOTH PETITIONS

Prayer in CRL MP(MD). 11485/ 2017 :

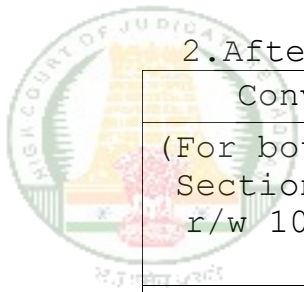
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence pursuant to the Judgment of conviction render by the V Additional District and Sessions Judge, Madurai, in S.C.No.302 of 2015 dated 31.10.2017, pending disposal of the above Criminal Appeal.

Prayer in CRL MP(MD). 11486/ 2017 :

To suspend the sentence pursuant to the Judgment of conviction render by the V Additional District and Sessions Judge, Madurai, in S.C.No.302 of 2015 dated 31.10.2017, pending disposal of the above Criminal Appeal.

Order : These petitions coming on for orders upon perusing the petitions filed in support thereof and upon hearing the arguments of M/S.J.JEYAKUMARAN, Advocate for the petitioner in both petitions and of MR.C.MAYILVAHANA RAJENDRAN, Additional Public Prosecutor on behalf of the Respondent in both petitions while admitting CRL A the court made the following order:-

These Criminal Miscellaneous Petitions have been filed by the petitioners /A1 & A2/ Appellants, praying to suspend the sentence of imprisonment imposed on them by the learned V Additional District and Sessions Judge, Madurai, in its order dated 31.10.2017 in S.C.No.302 of 2015 pending disposal of the above Criminal Appeal.



2. After trial, they have been convicted and sentenced as under:

Conviction	Sentence
(For both of them) Section 304 (ii) r/w 109 of IPC	4 years S.I. + Fine of Rs.5,000/- each, i/d 1 month S.I.
(For A1 alone) Section 294(b) of IPC	Fine of Rs.250/-, i/d one week S.I.

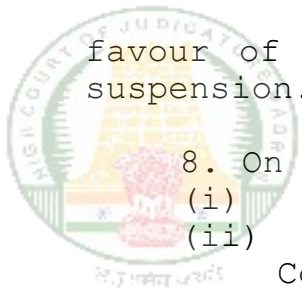
3. Fine amount has been paid by the petitioners / appellants and copy of the receipts are also produced. A3 & A4 in this case were acquitted. The petitioners were also acquitted from the charges under Section 307 r/w 34 r/w 109 of IPC and also under Section 341 of IPC.

4. The learned counsel appearing for the petitioners / appellants submitted that the Doctor, who was examined at the first instance, was not examined by the prosecution and the recovery of the material object has not been proved by the prosecution and other prosecution witnesses have not been corroborated with each other in respect of the alleged occurrence. Initially, the case was registered under Sections 294(b), 341, 323, 324 and 307 IPC and thereafter, the same was altered into 302 r/w 34 of IPC since, the injured died in the hospital itself. The Trial Court has convicted the appellants under Section 304 (ii) r/w 109 of IPC and convicted A1 under Section 294(b) of IPC. He also submitted that the respondent has not collected the blood stain materials from the place of occurrence and did not send M.Os.2 & 3 to Forensic Science Laboratory and also did not mention the injury on the head of the deceased. He further submitted that the petitioners / appellants are having arguable points in this appeal and they are having a prima facie case in their favour and the petitioners was on bail during trial.

5. The learned Additional Public Prosecutor appearing for the respondent would submit that the Trial Court has rightly convicted the accused on the basis of the evidence adduced by the prosecution during trial and the petitioners / appellants are not having any prima facie case in the appeal. However, the learned Additional Public Prosecutor has no serious objection to grant an order of suspension.

6. This Court heard the submissions made by the learned counsel appearing for the petitioners / appellants and the learned Additional Public Prosecutor appearing for the respondent and also perused the materials available on record, including the impugned Judgment of the Court below.

7. Considering the above facts and circumstances of the case, this Court is of the view that there are certain arguable points involved in this Criminal Appeal and they are required to be examined in detail in the main Appeal. I see prima facie case in



favour of the petitioners / appellants, for grant of an order of suspension.

8. On considerations, ordered as under:-

- (i) Appeal bail granted.
- (ii) Sentence of imprisonment ordered by the trial Court alone is suspended, till the disposal of the appeal.
- (iii) There shall be two sureties and they shall execute a bond for Rs.15,000/- (Rupees Fifteen Thousand Only) each to the satisfaction of the learned District Munsif cum Judicial Magistrate, Peraiyur.
- (iv) The petitioners / appellants shall appear before the said Court on the first working day of every month at 10.30 am., until further orders.

sd/-

19/12/2017

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE, MADURAI.
- 2 THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRTE, PERAIYUR.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, MADURAI DISTRICT.
- 4 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
- 5 THE SUPERINTENDENT, WOMEN PRISON, MADURAI.
- 6 THE INSPECTOR OF POLICE,
PERAIYUR POLICE STATION, (PERAIYUR CIRCLE).
- 7 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+2. C.C. to M/S.J.JEYAKUMARAN Advocate SR.Nos.36496 & 36497

ORDER IN

CRL MP(MD) Nos.11485 & 11486 of 2017

IN CRL A(MD) No.507 of 2017

Date :19/12/2017

MKV-VR-SAR 4/20.12.2017/3P-10C

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