



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

Wednesday, the Twelfth day of April Two Thousand Seventeen

PRESENT

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

CRL MP(MD) No.2579,2581 and 2583 of 2017
and
CRL.M.P(MD)NOS.2580,2582 and 2584 of 2017
IN
CRL A(MD) No.120 of 2016

SARAVANAMUTHU	... PETITIONER/APPELLANT/ACCUSED NO.1 IN CRL MP(MD) No.2579,2580 of 2017
LAKSHMANAKUMAR	... PETITIONER/APPELLANT/ACCUSED NO.3 IN CRL MP(MD) No.2581,2582 of 2017
SELVAM	... PETITIONER/APPELLANT/ACCUSED NO.1 IN CRL MP(MD) No.2583,2584 of 2017

Vs

THE STATE REP.BY
THE DEPUTY SUPERINTENDENT OF POLICE,
THOOTHUKUDI TOWN SUB DIVISION,
THALAMUTHU NAGAR POLICE STATION,
CR.NO.332/2013
THOOTHUKUDI DISTRICT. ... RESPONDENT/RESPONDENT/COMPLAINANT IN
ALL PETITIONS

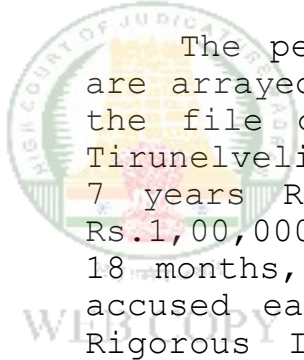
**Prayer in CRL MP(MD) No.2579,2581,2583 of 2017 IN
CRL A(MD) No.120 of 2016:**

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to set-aside the order passed dated 06/03/2017 in S.C.No.158/2014 on the file of the Learned IInd Additional District Sessions Judge (PCR) Tirunelveli, Tirunelveli District.

**Prayer in CRL MP(MD) . 2580,2582,2584 of 2017 IN
CRL A(MD) No.120 of 2016 :**

To Suspend the Execution of sentence by granting bail relates to fine amount in S.C.No.158/2014 dated 15/03/2016 on the file of the Learned IInd Additional District Sessions Judge (PCR) Tirunelveli, Tirunelveli District.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S K.PRABHU, Advocate for the petitioner in all the Petitions and of MR.P.KANDASAMY, Government Advocate(Crl.Side) in all the Petitions on behalf of the Respondents the court made the following order:-

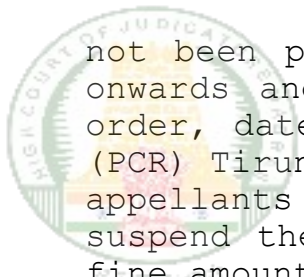


The petitioners in Crl.M.P(MD)Nos.2579, 2581 and 2583 of 2017 are arrayed as A1, A2 and A3 respectively in S.C.No.158 of 2014, on the file of the learned II Additional Judge (PCR), Tirunelveli, Tirunelveli District, which convicted them and sentenced to undergo 7 years Rigorous Imprisonment each and also to pay a fine of Rs.1,00,000/- each, in default, to undergo Simple Imprisonment for 18 months, for the offence under Section 354(B) of IPC., and the accused each are convicted and sentenced to undergo to one year Rigorous Imprisonment and to pay a fine of Rs.1000/- each, in default, to undergo Simple Imprisonment for two months, for the offence under Section 324 of IPC., (Total fine amount of Rs.3,03,000/-) and the above sentences are ordered to be run consecutively. [Total sentence period is Eight Years). It is further ordered that out of the fine amount, a sum of Rs.3,00,000/- should be paid to the victim / P.W.3, as compensation, in terms of Section 357(1) of Cr.P.C., in addition to the compensation, if any, granted, as per Rule 12(4) of SC/ST (POA) Rules 1995.

2. Aggrieved by the order of conviction and sentence, A1 to A3 preferred Crl.A.(MD)No.120 of 2016 and the said Appeal is pending before this Court. At the time of filing the said Appeal, the appellants filed Crl.M.P(MD)Nos. 3031, 3030 and 3029 of 2016 respectively, seeking suspension of execution of sentence by granting bail, till the disposal of the Appeal and the said petitions were seriously contested by both sides and lastly, the said petitions were dismissed by this Court, as per order, dated 22.08.2016 in which it was held that no iota of materials or any acceptable reason that to wreck vengeance or with some ulterior motive, P.W.3 / victim, who is deaf and dumb person against whom, the alleged offences were committed or P.W.1 mother of P.W.3 had roped the accused in this case and very serious acquisition have been made against the accused and there is no *prima face* case made against them.

3. Again the appellants filed Crl.M.P(MD)Nos.9861, 9815 and 9860 of 2016 respectively second time praying for an order to suspend the execution of sentence by granting bail during the pendency of the appeal and those petitions were heard and ordered granting appeal bail and also suspension of substantive sentence alone, on execution of a bond for Rs.20,000/- with two sureties for a like sum each to the satisfaction of the learned Judicial Magistrate No.II, Tuticorin and also on condition that the petitioners shall appear before the trial Court ie., the learned II Additional District and Judge, Tirunelveli, once in a week ie., on every Monday at 10.30 a.m., until further orders.

4. It is admitted that the petitioners came out from jail after executing the sureties and appeared before the trial Court to comply the condition imposed by this Court and the trial Judge has taken sumotu and remanded the petitioners stating that there is no order from the High Court either suspending or by passing any specific order in respect of non-payment of fine and compensation amounts, though they have specifically stated in their Appeal Memorandum and Suspension of Sentence Petitions that fine amount has



not been paid. Now, they are in judicial custody from 06.03.2017 onwards and confined at Central Prison, Palayamkottai, as per the order, dated 06.03.2017 of the learned II Additional Sessions Judge (PCR) Tirunelveli. The presents petitions are filed by the appellants to set aside the order, dated 06.03.2017 and also to suspend the execution of sentence by granting bail relating to the fine amount.

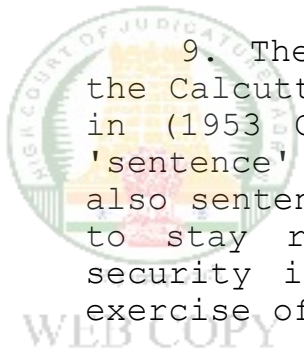
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5. The learned counsel appearing for the petitioners would contend that before passing the final order in Criminal Appeal pending before this Court, the default sentence in respect of non-payment of fine amount will not arise and default sentence will run after the substantive sentence is over and there is no provision in the Cr.P.C., when there is substantiate sentence and fine, there is no question of separate order for the fine amount and the sentence includes substantive sentence and fine and the order of this Court to suspend the substantive sentence, there is no question of separate order to suspend the fine and hence, the impugned order is ultravires and without jurisdiction and is liable to be set aside.

6. The learned Government Advocate (crl.side) appearing for the respondent by filing counter would contend that while granting appeal bail by this Court, substantive sentence alone is suspended, which means in the legal parlance, the basic sentence ie., the sentence of imprisonment and there is no mentioning about the suspension of sentence of fine, which includes compensation to be paid to the victim woman and the fine is intended to be paid, as compensation to the victim hence, to meet the ends of justice, the amounts should be ordered to be deposited, till the disposal of the appeal and these petitions are to be dismissed, as devoid of merits.

7. The learned Government Advocate (crl.side) appearing for the respondent has also relied on the decision of this Court, in support of his contentions, in Bay Leathers Exports Pvt.Ltd., Vs. Saileela reported in (1998 CrL.L.J. 3719), wherein it has been held that "where the sentence of both imprisonment and fine is imposed, the legitimate condition that could be imposed by the Court while granting prayer for suspension of imprisonment could be to call upon the appellant to execute bond on suitable terms and furnish the sureties to ensure his presence before the Court to undergo the sentence of imprisonment, in the event of dismissal of the appeal. For suspending the sentence of fine, the legitimate condition that could be imposed to direct the appellant to furnish a suitable security, which could ensure the deposit of fine, which may ultimately be imposed on the appellant as a result of the decision of appeal"

8. In this case, neither reasons given for suspending sentence of fine nor any conditions imposed to furnish suitable security for Rs.1,00,000/-. Only if such a condition is imposed, the appellate Court would be able to recover the fine from the appellant in the event of confirming the conviction.

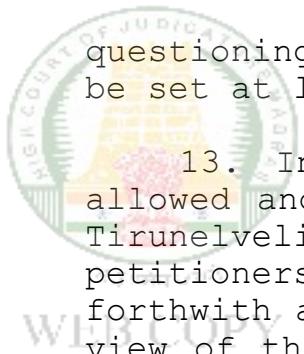


9. The counsel for the petitioners relied on the decision of the Calcutta High Court in Damji Karamchand Vs. Kutch State reported in (1953 Cri.LJ 714), wherein it has been held that the word, 'sentence' means not only the substantive term of imprisonment but also sentence of fine and there was nothing illegal in such an order to stay realisation of fine had to provide for furnishing of security in the interest of justice, which could be made in the exercise of inherent powers of the Court.

10. In the case on hand, this Court has not given any reasons for suspension sentence of fine including the payment of compensation to be paid out of the fine amount in suspension of substantial sentence passed in CrI.M.P(MD)Nos.9861, 9815 and 9860 of 2016, as per order dated 30.01.2017.

11. The learned Government Advocate (crl.side) appearing for the respondent has not come forward for cancellation of bail ordered, as per the order, dated 31.02.2017, by raising any objections in passing such order of bail and suspension of sentence under Section 389(1) Cr.P.C., In compliance of the orders passed by this Court in the above petitions, the petitioners have executed the bond with two sureties to the satisfaction of the learned Judicial Magistrate No.II, Thoothukudi and they were released from the jail. While the petitioners were appearing before the trial Court ie., learned II Additional District and Sessions Judge, Tirunelveli in compliance of the conditional order of appearance, in compliance of order of this Court, the said Sessions Judge has taken the issue of no suspension of order in respect of payment of fine amount, sumotu without any authority of law questioning the order of this Court in passing the order of suspension of sentence, against the petitioners, directing the accused to be handed over to the prison authorities and they shall be in custody until serving the default sentence for fine imposed in S.C.No.158 of 2014 or pending payment of fine or unless any orders specifically suspending the fine or any other orders passed by this Court and call for a report from the learned Judicial Magistrate No.2, Thoothukudi, to show-cause above release of the convicts without order of suspending the fine of High Court. The said impugned order is without any jurisdiction and is also liable to be set aside.

12. Admittedly, there is no specific order by this Court in respect of suspending the sentence of fine or any condition imposed to furnish suitable security for the fine amount. However, the substantive sentence was suspended which also includes the sentence of fine amount, as per Section 389(1) of Cr.P.C., and also Section 426 of IPC. The non-payment of fine amount imposed by the trial Court is also mentioned in the Appeal Memorandum itself. This Court has taken into consideration the above facts and also the facts of the case advanced by the appellants and also perusing the impugned Judgment, appeal bail was granted and substantive sentence was suspended by this Court. Considering the above stated circumstances and also the reasons, this Court is inclined to set aside the order of the learned II Additional District Judge, Tirunelveli, dated 06.03.2017, which was passed sumotu and without any authority of law



questioning the orders of this Court and the accused are ordered to be set at liberty in this case.

13. In the result, the Criminal Miscellaneous Petitions are allowed and the learned II Additional District and Sessions Judge, Tirunelveli, is directed to issue an order of release of the petitioners / accused from the Central Prison, Palayamkottai forthwith and to report the same to the Registry of this Court. In view of the orders passed in Crl.M.P(MD)Nos.2579, 2581 and 2583 of 2017, the petitions in Crl.M.P(MD)Nos.2580, 2582 and 2584 of 2017 are closed, as unnecessary.

sd/-
12/04/2017

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

TO

- 1 THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE, TIRUNELVELI
- 2 THE JUDICIAL MAGISTRATE NO.2, THOOTHUKUDI
- 3 -DO- THRO THE CHIEF JUDICIAL MAGISTRATE, THOOTHUKUDI
- 4 THE DEPUTY SUPERINTENDENT OF POLICE,
THOOTHUKUDI TOWN SUB DIVISION,
THALAMUTHU NAGAR POLICE STATION,
THOOTHUKUDI DISTRICT.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.
- 6 THE SUPERINTENDENT OF CENTRAL PRISON, PALAYAMKOTTAI

Copy To:

THE REGISTRAR (JUDICIAL)
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. C.C. to M/S K.PRABHU Advocate SR.No.19986

ORDER IN
CRL MP (MD) No.2579,2581 and 2583 of 2017
and
CRL.M.P (MD)NOS.2580,2582 and 2584 of 2017
IN
CRL A (MD) No.120 of 2016
Date :12/04/2017