

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twenty Eighth day of June Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.11887 of 2017

IN CRL A.603/2017

1 ILLAYARAJA
2 THANGAMMAL
3 MALAR

[PETITIONERS]

Vs

THE STATE REP.BY [RESPONDENT]
THE DEPUTY SUPERINTENDENT OF POLICE,
PERAMBALUR SUB DIVISION,
PERAMBALUR DISTRICT.
CR.NO.798/2014.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.603/2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed against the petitioners/appellants in S.C.No.15 of 2016 dated 31.08.2017 by the learned Mahila Judge, Perambalur District and enlarge the petitioners/appellants on bail till the disposal of the above CRL A.603/2017.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.603/2017 on the file of the High Court and upon hearing the arguments of MR.C.D.JOHNSON, Advocate for the petitioner and of PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

This Miscellaneous Petition has been filed by the petitioners/A1 to A3 to suspend the sentence imposed against him in S.C.No.15 of 2016 on 31.08.2017 by the learned Mahila Judge, Perambalur District and enlarge them on bail, pending disposal of Crl.A.No.603 of 2017.

2. The petitioners/A1 to A3 have been convicted for the offences under Sections 498(A) and 306 IPC and further, the petitioners/A2 & A3 have been convicted for the offence under Section 354 IPC and sentenced to undergo imprisonment as follows:

S1.No	Offences/Accused	Sentence, Imprisonment and Default Punishment
1.	Section 354 IPC / A2 & A3	Five years Simple Imprisonment with a fine of Rs.3,000/- each in default to undergo eighteen months Simple Imprisonment

2.	Section 498(A) IPC / A1 to A3	Three years Simple Imprisonment with a fine of Rs.3,000/- each in default to undergo ten months Simple Imprisonment
3.	Section 306 IPC / A1 to A3	Ten years Rigorous Imprisonment with a fine of Rs.5,000/- each in default to undergo three years Simple Imprisonment

Against the conviction and sentence, the petitioners have preferred an appeal CrI.A.No.603 of 2017, along with which, the present miscellaneous petition has been filed, seeking suspension of the sentence awarded.

3. The case of the prosecution is that the 1st accused is the husband of the deceased wife, namely, Nirmala and he along with A2 and A3 demanded more dowry from the deceased, abused her in filthy language and due to unbearable torture meted out by her at the hands of the accused persons, she had committed suicide, by pouring kerosene onto her body, which resulted in registration of an FIR in Crime No.798 of 2014 against the accused persons on the basis of the complaint lodged by the father of the deceased and the Trial Court, after considering the oral and documentary evidence, convicted the accused persons for the offences as stated supra.

4. Learned counsel for the petitioners / appellants would submit that even though no charge was framed for the offence under Section 306 IPC and no charge sheet was filed in respect of the said offence, the Trial Court convicted the accused persons for the offence under Section 306 IPC. In the dying declaration/Ex.P10, the deceased had stated that pursuant to the illegal intimacy of her husband with one Tamil Selvi, she was forced to commit self immolation and therefore, it is clear that the provisions of Section 306 IPC will not attract in this case. He would further submit that based on the evidence of P.W.6, who is the mother of the deceased, the accused persons have been convicted under Section 354 IPC and P.W.6 is an interested witness and she has reiterated the same version as that of her husband / P.W.1. Contending that there is neither demand of dowry nor commission of the offence of abetment to suicide on the part of the accused persons, it is prayed that the petitioners are entitled to the grant of suspension of sentence.

5. On the other hand, the learned Government Advocate (CrI.Side) has contended that the 1st accused used to send abusive messages to the cellphone of the deceased by using unparliamentary words. The accused persons frequently scolded the deceased in filthy language in front of her parents and instigated her to commit suicide. It was further contended that the parents of the deceased were insulted by the accused persons and were assaulted by them with chappel. Learned Government Advocate (CrI.Side) has also contended that the prosecution has proved the guilt of the accused persons beyond reasonable doubt through oral and documentary evidence and the Trial Court, on the basis of the incriminating materials against the petitioners/accused, has rightly convicted him and therefore, the accused persons are not entitled to the grant of suspension of sentence and the petition is liable to be dismissed.

6. In the light of the submissions made on either side hereinabove, taking into account the fact that the accused is in jail for the past ten months; that according to the learned counsel for the petitioners, he has got some arguable points in the appeal and also the fact that the appeal is not likely to be heard in the near future, this Court is inclined to grant suspension of the sentence to the petitioners/accused.

7. In the result,

a) this petition is ordered;

b) the sentence imposed against the petitioners in S.C.No.15 of 2016 on 31.08.2017 by the learned Mahila Judge, Perambalur District, is suspended till the disposal of Criminal Appeal No.603 of 2017;

c) the petitioners shall be released on bail on each of them executing a bond for a sum of Rs.10,000/- and two sureties each for a likesum to the satisfaction of the learned Mahila Judge, Perambalur District;

d) and on further condition that they shall appear before the said Court weekly once, viz., on the first working day of every week at 10.30 a.m until further orders.

-sd/-
28/06/2018

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 MAHILA JUDGE,
PERAMBALUR DISTRICT.

2 THE DEPUTY SUPERINTENDENT OF POLICE,
PERAMBALUR SUB DIVISION,
PERAMBALUR DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.

5 THE SUPERINTENDENT,
CENTRAL PRISON FOR WOMEN, TRICHY.

+1C.C. to M/S.C.D.JOHNSON Advocate on payment of necessary
charges in SR.NO. 11814

Order

in
CRL MP.11887/2017

in
CRL A.603/2017

Date :28/06/2018

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MLT-03/07/2018