

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Third day of January Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice R. SURESH KUMAR

CRIMINAL MISCELLANEOUS PETITION No.13368 of 2017

IN CRL A.648/2017

RAJKUMAR,

[PETITIONER]

Vs

THE STATE REP BY ITS, [RESPONDENT]
THE DEPUTY SUPERINTENDENT OF POLICE,
RAILWAY POLICE STATION,
CHENNAI CENTRAL
CR.NO.623 OF 2011.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.648/2017 on the file of the High Court, the High Court will be pleased to suspend the sentence of imposed on the petitioner appellant in S.C.No.66 of 2012 on the file of Learned PRINCIPAL SESSIONS JUDGE, VELLORE, VELLORE, DISTRICT dated 21.08.2017 and enlarge the petitioner on bail, pending disposal of C.A.No.648 of 2017.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.648/2017 on the file of the High Court and upon hearing the arguments of M/S.A.NAGARAJAN Advocate for the petitioner and of MR.R.RAVICHANDRAN Government Advocate[crl.side] on behalf of the Respondent the court made the following order:-

This petition has been filed to suspend the sentence of imprisonment imposed on the petitioner/appellant in S.C.No.66 of 2012, on the file of the Principal Sessions Judge, Vellore, Vellore District by judgement dated 21.08.2017 and enlarge the petitioner on bail pending disposal of the Crl.A.No.648 of 2017.

2. I have heard Mr.K.R.Ramesh Kumar, learned counsel for the petitioner/appellant and Mr.R.Ravichandran, learned Government Advocate [Crl. Side] appearing for the respondent.

3.The learned counsel for the petitioner would submit that, based on the evidence produced before the Trial Court by the prosecution, if at all, the petitioner is found to be guilty, it should be only for his alleged negligent act by which he can be implicated only under Section 304 (A) of IPC and not under section 304(b) [12 counts] of IPC.

4. In this regard, the learned counsel for the petitioner would invite the attention of this court that, the trial court on three major questions, had decided, one question in favour of the petitioner/accused and with regard to the other two questions are concerned, though there is no evidence to come to such a conclusion, the trial court has come to such a wrong conclusion and therefore, based on such conclusion, the trial court has given the punishment of imprisonment for ten years for each count for the offence under Section 304(ii) of IPC [12 counts] and further convicted and sentenced to undergo rigorous imprisonment of five years for the offence under Section 3 of Tamil Nadu (Prevention of Damage and Loss) Act 1992 read with Section 151 of Railways Act and to pay a fine of Rs.1,00,000/- in default to undergo simple imprisonment of one year.

5. However, Mr.R.Ravichandran, learned Government Advocate (Crl.Side) appearing for the respondent would submit that because of the negligent act on the part of the petitioner, though he is having knowledge that such of his negligence act would cause a great havoc like the, one happened in that case, 12 persons were killed and 75 others were injured grievously. That apart, the said accident, because of the act of the petitioner, caused a heavy damage to the extent of Rs.2 Crore to the Railways.

6. Therefore, the learned Government Advocate (Crl.Side) appearing for the respondent would submit that, the trial court after taking into account all these aspects and also the evidences filed both oral as well as documentary, has come to the right conclusion that the petitioner has been guilty of offence punishable under Section 304(ii) of IPC [12 counts] and also liable to be punished for offences under the provisions of the Tamil Nadu (Prevention of Damage and Loss) Act, 1992 r/w Section 151 of Railways Act.

7. I have considered the said submissions made by both sides. It is true that because of the accident where admittedly the petitioner was the driver, who was driving the train, 12 persons were killed and 75 persons were injured. However, the trial court though framed three issues for deciding the guilt of the petitioner, has answered one question in favour of the petitioner with regard to the exceeding speed limit. With regard to the other two questions namely whether the accused was talking in the cell phone prior to the accident and whether the accused had not followed the signal at the time of accident and thereby hit against the on going train, the trial court found in favour of the prosecution and against the petitioner.

8. The trial Court has come to the conclusion that the speedometer and memory card from train No.66017 was recovered by the Senior DEE, who was examined as P.W.66 and based on such memory card, the time of the accident was fixed at 21.21hrs.

9. The Trial court also found that as per the deposition of P.W.45, at 9.00p.m, on the fateful day, the petitioner was talking over phone to P.W.45. Corroborating these two, the trial Court has come to the conclusion that it is before the accident time, the

petitioner was talking over cell phone and with the result he missed the signal and thereby the fatal accident taken place and accordingly, the Trial court found that the petitioner was guilty and punishable under Section 304 (ii) of IPC.

10. However, on prima faice, it seems that whether the speedometer from train No.66017 was marked as M.O. or document before the trial court has not been specifically mentioned. Also it was the specific deposition of the defence witnesses that, there was disturbances in the signal in that sector. These aspects has to be gone into in detail and ultimately has to be decided as to whether the petitioner was talking over cell phone before the accident taken place and in order to ascertain the same, the actual time of accident also has to be ascertained. This exercise can be done only at the time of final disposal of the appeal and since it will take some reasonable time to take the main appeal as this appeal is of the year 2017, in view of the prima facie case that there are two views possible in this matter and the same can be decided only at the time of final hearing of the appeal, this court is inclined to pass the following order in this Criminal Miscellaneous Petition:

(i) The substantive sentence of imprisonment alone imposed against the petitioner is suspended on condition that the petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a likesum to the satisfaction of the learned Judicial Magistrate, Arakkonam, within a period of two weeks from the date of receipt of a copy of this order. On such execution of the sureties the petitioner shall be enlarged on bail.

(ii) Also, the petitioner shall appear before the concerned Magistrate Court on the first working day of every English Calendar month at 10.30 a.m., until further orders.

-sd/-
03/01/2018

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 PRINCIPAL SESSIONS JUDGE
VELLORE, VELLOE DISTRICT

2 THE JUDICIAL MAGISTRATE,
ARAKKONAM

3 THE CHIEF JUDICIAL MAGISTRATE
VELLORE[FOR INFORMATION]

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE STATE REP BY ITS,
THE DEPUTY SUPERINTENDENT OF POLICE,
RAILWAY POLICE STATION,
CHENNAI CENTRAL

6 THE SUPERINTENDENT,
CENTRAL PRISON,VELLORE

1 C.C. to M/S.K.R.RAMESH KUMAR Advocate on payment of necessary
charges SR.NO. 109

Order

in
CRL MP.13368/2017

in
CRL A.648/2017

Date :03/01/2018

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RD 03/01/2018