

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Tenth day of January Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M. VENUGOPAL

and

The Hon`ble Mr Justice S. VAIDYANATHAN

CRIMINAL MISCELLANEOUS PETITION No.144 of 2018

IN CRL A.15/2018

1 MURUGAN,
2 GOWTHAM CHAND,

[PETITIONERS]

Vs

THE STATE REPRESENTED BY [RESPONDENT]
THE INSPECTOR OF POLICE, L&O,
R10 MGR NAGAR POLICE STATION,
CHENNAI-600 083.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.15/2018 on the file of the High Court, the High Court will be pleased to

[i]suspend the sentence imposed upon the Petitioner/Appellant in S.C.No.192 of 2015 on the file the Learned Sessions Judge, Mahila Court at Chennai dated 02.01.2018 and enlarge the Petitioner/Appellant on bail, pending disposal of the above Criminal Appeal.[CRL.MP.NO.144 OF 2018]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.15/2018 on the file of the High Court and upon hearing the arguments of M/S.V.KRISHNAMOORTHY, Advocate for the petitioner and of MR.R.SURYA PRAKASH Government Advocate[crl.side] on behalf of the Respondent the court made the following order:-

Heard both sides.

2.The Petitioners/Appellants/A3 and A4 have focussed the instant Criminal Appeal before this Court as against the Judgment dated 02.01.2018 in S.C.No.192 of 2015 passed by the learned Sessions Judge, Mahila Court, Chennai.

3.Earlier, the learned Sessions Judge, Mahila Court, Chennai, while passing the Judgment in S.C.No.192 of 2015 on 02.01.2018, had found the A1 and A2 guilty in respect of the charges under Sections 450, 302 and 380 r/w. 34 I.P.C. As a matter of fact, the

Petitioners/Appellants/A3 and A4 were found guilty in respect of the charge under Section 411 r/w. 34 I.P.C. Indeed, the 5th Accused was not found guilty for the charge under Section 411 r/w.34 I.P.C.

4.After contest, A1 and A2, who were found guilty in respect of the offence under Sections 450, 302 and 380 r/w.34 I.P.C., were convicted for the aforesaid charges and was sentenced to undergo imprisonment for life and to pay a fine of Rs.5,000/- each, in default to undergo further period of 6 months Simple Imprisonment for the offence under Section 302 I.P.C. and was sentenced to undergo 3 years Simple Imprisonment and to pay a fine of Rs.5,000/- each, in default to undergo further period of 6 months Simple Imprisonment for the offence under Section 450 I.P.C. and was sentenced to undergo 3 years Simple Imprisonment and to pay a fine of Rs.5,000/- each, in default to undergo further period of 6 months Simple Imprisonment for the offence under Section 380 r/w.34 I.P.C. and the sentences of imprisonment for all the three offences are ordered to run concurrently. In respect of the Petitioners/Appellants/A3 and A4, who were found guilty under Section 411 r/w. 34 I.P.C., they were sentenced to undergo 6 months Simple Imprisonment and to pay a fine of Rs.5,000/- each, in default to undergo further period of three months Simple Imprisonment.

5.Being aggrieved against the Judgment dated 02.01.2018 in S.C.No.192 of 2015 passed by the Learned Sessions Judge, Chennai, the Petitioners/Appellants/A3 and A4 have preferred the instant Criminal Appeal before this Court, contending that the Judgment of the trial Court is against Law, weight of evidence, probabilities of the case.

6.The Learned Counsel for the Petitioners/Appellants proceeds to points out that the trial Court had failed to appreciate the aspect of cross examination in respect of P.W.17 and P.W.26 (Investigating Officer).

7.In short, the core contention advanced on behalf of the Petitioners is that there is no evidence worth piece of paper to convict the Petitioners/ Appellants. Furthermore, the evidence of P.W.17 was not properly analysed by the trial Court in real and proper perspective.

8.Yet another submission of the Learned Counsel for the Petitioners is that the Investigating Officer (P.W.26) investigating is faulty and to put it succinctly, the Judgment of the trial Court, it is contended that on behalf of the Petitioners that it is liable to be set aside, because of the reason it has not taken into many vital factual and legal aspects of the case.

9.It is represented on behalf of the Petitioners/Appellants/A3 and A4 that the fine of Rs.5,000/- each was remitted before the trial Court.

10.Per contra, it is the submission of Mr.Harihara Arun Soma Sankar, Learned Government Advocate (Crl. Side) appearing for the Respondent/ State that in the main case, on behalf of the

Respondent/Prosecution, witnesses P.W.1 to P.W.26 were examined. Exs. P.1 to P.39 and M.O.1 to M.O.17 were marked. On the side of the Defence/Accused, no one was examined and no document was marked.

11.A perusal of the contents of the Judgment passed by the trial Court latently and patently indicates that when the A1 proceeded to pledge the Thali Chain with A4, he received the same, even though he knows that the said property was a stolen property. Furthermore, as instructed by A4, his son A5 and the 3rd Accused, who was working in their shop had prepared the receipt in the name of one Ravi for Rs.80,000/- and A5 had put his signature in the receipt and obtained the jewels etc.

12.Considering the fact that the Petitioners/Appellants have preferred the present Criminal Appeal before this Court and on a perusal of the grounds raised in the Memorandum of Grounds of Appeal, this Court is of the considered view that they require detail examination and also they have raised some substantial or arguable points, which are to be looked into by this Court at the time of hearing of the main Criminal Appeal.

13.It is not in dispute that an 'Appeal' is a continuation of proceedings and pending Appeal, the present Petitioners have projected the CrI.M.P.No.144 of 2018 seeking Suspension of Sentence and to enlarge them on bail.

14.In this connection, it is not out of place for this Court to make a significant mention that when a person is sentenced to a short term imprisonment, then, the normal rule is that pending Appeal, the sentence should be suspended and rejection is only by way of an exception, as per decision of the Hon'ble Supreme Court in **Kiran Kumar V. State of Madhya Pradesh reported in 2000 Judgment Today (Suppl.) (1) SC 208.**

15.Inasmuch as the Petitioners/Appellants/A3 and A4 have preferred the present Criminal Appeal and considering the fact that the Petitioners/Appellants/A3 and A4 have raised some arguable/tangible points which require to be looked into by this Court at the time of hearing of the main Appeal and also considering the other entire conspectus of the surrounding attendant facts and circumstances of the case in an encircling manner, at this stage, this Court is inclined to suspend the Substantial Sentence of Imprisonment alone and orders the release of the Petitioners/Appellants/A3 and A4 on their executing a bond for a sum of Rs.15,000/- each (Rupees Fifteen Thousand only) with two sureties each for a like sum to the satisfaction of the Learned Sessions Judge, Mahila Court, Chennai and on further condition that they shall appear before the said Court on the First Working day of every English Calender month at 11.00 a.m. without fail, till the disposal of the Criminal Appeal.

16. Accordingly, the Crl.M.P.No.144 of 2018 is ordered, on above terms.

-sd/-
10/01/2018

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 SESSIONS JUDGE
MAHILA COURT, CHENNAI

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE, L&O,
R10 MGR NAGAR POLICE STATION,
CHENNAI-600 083.

+1 C.C. to M/S.V.KRISHNAMOORTHY Advocate on payment of
necessary charges SR.NO. 579

Order

in
CRL MP.144/2018

in
CRL A.15/2018

Date :10/01/2018

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RD 10/01/2018