

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the First day of August Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION NOS.9207 AND 8935 of 2018

IN CRL RC.NOS.812 AND 787 OF 2018

1 SIVARAJ [PETITIONERS /
2 VASANTHI IN BOTH THE PETITIONS]
3 GOPAL

Vs

1 THE STATE REP BY ITS, [RESPONDENTS /
THE INSPECTOR OF POLICE, IN BOTH THE PETITIONS]
DISTRICT CRIME BRANCH, (ALGSC),
VELLORE DISTRICT,
CR.NO.51 OF 2011.

2 KUPPAMMAL [RESPONDENT / APPELLANT
IN CRL.MP.NO.9207 OF 2018
IN CRL.RC.NO.812 OF 2018]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL RC.NOS.812 AND 787 OF 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence of the principal District and Sessions Judge, Vellore dated 11.06.2018 passed in 72 OF 2017 and C.A.NO.47 of 2017 on Appeal against C.C.No.105 of 2012 dated 13.04.2017 of the Judicial Magistrate II, Vellore pending disposal of the above Criminal Revision No.812 of 2018 and Crl.R.C.No.787 of 2018. [IN CRL.MP.NOS.9207 AND 8935 of 2018]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL RC.NOS.812 AND 787 OF 2018 on the file of the High Court and upon hearing the arguments of MR.P.V.SUDAKAR, 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:-

The petitioners in both the petitions are arrayed as Accused Nos.1 to 3.

2. Learned counsel appearing for the petitioners submitted that accused Nos.1, 2 and 3 are the revision petitioners herein. Pending criminal revision petitions in Crl.R.C.Nos.812 and 787 of 2018 respectively, they have filed the above two criminal miscellaneous petitions seeking to suspend the sentence awarded by the Lower Appellate Court/Principal Sessions Court, Vellore District, in

Crl.A.Nos.72 and 47 of 2017 respectively.

3. The cases were instituted based upon the police report filed by the Inspector of Police, District Crime Branch, Vellore, in Crime No.51 of 2011 for the offences under Sections 120(b), 419, 420, 468, 471 r/w.34 of IPC.

4. The case of the prosecution is that A.1/Sivaraj is the son of P.W.1-Kuppammal, A.2-Vasanthi is the wife of A.1, third and fourth accused are parents of A.2. The property in Sekanoor Village was the self earned property of P.W.1's husband Jevarithnam and he has settled the property in favour of P.W.1 vide Document No.2314/08 Ex.P2 Dated 28.02.2008. As per the above said document, P.W.1 is the owner of the property. A.1 to A.4, with an intention to cheat P.W.1, had conspired together at Sekanoor village on 05.04.2010. Thereafter, with an intention to cheat the property of P.W.1, the first accused had created a false Settlement Deed vide Document No.3569/2010, Ex.P.16 dated 05.04.2010. A.4 had impersonated P.W.1 and put her thumb impression in the above document in clumsy manner, so that it could not be found as to who executed the document. A.2 and A.3 had falsely identified A.4 as P.W.1 and had created the above said false document. Further, using the above false document as genuine one, a suit in O.S.No.341 of 2011 has been filed. Hence, A.1 to A.4 had committed the offences under Sections 120(b), 419, 420, 468, 471 r/w.34 of IPC.

5. After trial, the learned Judicial Magistrate No.II, Vellore acquitted all the accused and hence, the State has preferred an appeal in Crl.A.No.47 of 2017 and the de facto complainant has preferred an appeal in Crl.A.No.72 of 2017 and by common judgment, the learned Principal District and Sessions Judge, Vellore, allowed both the Criminal Appeals in part and found A.1 to A.3 guilty under Sections 120(b), 468 and 471 of IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.5000/- each for the offence under Section 468 of IPC and sentenced to undergo rigorous imprisonment for five years and to pay a fine of Rs.5000/- each for the offence under Section 471 of IPC and no separate punishment was awarded for Section 120(b) of IPC. However, with regard to the charges under Sections 419 and 420 IPC, the Lower Appellate Court acquitted A.1 to A.3 and the order of acquittal as against A.4 as ordered by the trial Court was confirmed. Aggrieved against the order passed by the Lower Appellate Court in Crl.A.No.72 of 2017, the petitioners herein/accused 1 to 3 have filed Crl.R.C.No.812 of 2018 and as against the order passed in Crl.A.No.47 of 2017, the petitioners herein/accused 1 to 3 have filed Crl.R.C.No.787 of 2018.

6. Learned counsel appearing for the petitioners would further submit that since the first accused has not married the daughter of P.Ws.1 and 2, a false case has been foisted against them and the Lower Appellate Court has failed to appreciate the Finger Print Expert Opinion given under Ex.P.11 by P.W.8.

7. Learned Government Advocate would submit that the Lower Appellate Court, after taking into account the Finger Print Expert Opinion given under Ex.P.20, wherein, the signature of P.W.1/Kuppammal in Ex.P.16 is not that of the signature of Kuppammal and Ex.P.16 is the Settlement Deed alleged to have been created by the first accused and P.W.10 has clearly deposed regarding the variations in the thumb impression and the signature in the alleged Settlement Deed and hence, strongly opposed for granting suspension of sentence to the petitioners.

8. Admittedly, P.W.1 is the mother of the first accused while P.W.2 is the father of the first accused and P.W.13 is the son-in-law and P.W.15 is daughter. The property in question covered under the document was originally belonged to the husband of the complainant, who was examined as P.W.2. Subsequently, settled in favour of P.W.1. It is the case of the prosecution that the first accused, who is son of P.Ws.1 and 2 married woman of his choice who is A.2 and created a document wherein they created a Settlement Deed as if P.W.1 mother has settled the property in favour of the first accused and wherein it has been projected as if A.4 has impersonated P.W.1 and identified by A.2 and A.3 in the document and which came into light when a portion of the property was sold to third party. The disputed document and the original document and the signatures have been sent to Forensic Department. Ex.P.16 is the registered Document No.3569/2010 and the Expert Opinion was examined as P.W.10 and based upon the Finger Print Expert Opinion-Ex.P.20, the conviction has been laid.

9. Considering the nature and gravity of the offence and existence of the evidence of the expert opinion, I am not inclined to grant suspension of sentence to the petitioners in both the petitions/accused Nos.1 to 3.

10. Accordingly, both the above criminal miscellaneous petitions, seeking suspension of sentence, are dismissed.

-sd/-

01/08/2018

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 DISTRICT AND
SESSIONS JUDGE, VELLORE.

2 THE JUDICIAL MAGISTRATE,
NO.II, VELLORE.

3 THE CHIEF JUDICIAL MAGISTRATE
VELLORE. [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
DISTRICT CRIME BRANCH, (ALGSC),
VELLORE DISTRICT.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

C.C. to M/S.P.V.SUDAKAR Advocate on payment of necessary
charges

Order

in
CRL MP.NOS.9207 AND 8935 of 2018

IN
CRL RC.NOS.812 AND 787 OF 2018

Date :01/08/2018

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MLT-06/08/2018

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