



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

Monday, the Sixteenth day of July Two Thousand Eighteen

WEB COPY

PRESENT

The Hon`ble Mr.Justice C.T.SELVAM
and
The Hon`ble Mr.Justice A.M.BASHEER AHAMED

CRL MP(MD) No.2154 of 2018
IN
CRL A(MD) No.134 of 2018

1 BHARATHAN
2 LINGAM @ LINGASAMY ... APPELLANTS/ ACCUSED NOS.1 & 4

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
KALLIKUDI POLICE STATION,
MADURAI DISTRICT.
(CRIME NO.50/2010) ... RESPONDENT/ COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed on the Petitioners by the Learned IV Additional District and Sessions Judge, Madurai in S.C.No.305/2012 dated 16.11.2017 and enlarge the petitioner on bail pending disposal of the above Criminal Appeal on the file of this Honourable Court.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of MR.S.PALANI PACKIAM, Advocate for the petitioner and of MR.S.CHANDRASEKAR, Additional Public Prosecutor for the Respondent, the court made the following order:-

[Order of the Court made by **C.T.SELVAM, J.**]

Petitioners are arrayed as A1 and A4 in S.C.No.305 of 2012 on the file of IV Additional Sessions Judge, Madurai, and under judgment dated 16.11.2017 they have been convicted for offences u/s.302 IPC and sentenced as follows:

Accused	Offence	Sentence
A1	302 IPC	Life imprisonment and fine of Rs.5,000/- i/d 3 months S.I.
A2	302 r/w 34 IPC	Life imprisonment and fine of Rs.5,000/- i/d 3 months S.I.



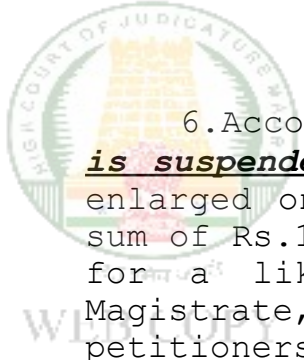
Petitioners have come forward with the above miscellaneous petition seeking relief of suspension of sentence pending appeal.

2.Learned counsel for petitioners submitted that according to prosecution, First Information Report had been registered by P.W.18, pursuant to calling at the hospital, where the deceased had been admitted, recorded the statement of P.W.3 and then returning to Police Station and registering the First Information Report at 7.30 a.m. on 05.04.2010 in Crime No.50 of 2010 under Sections 147, 148, 342, 307 IPC r/w 109 IPC. The occurrence took place on 04.04.2010 at 11.30 p.m. and then First Information Report has been registered by P.W.18. The evidence of P.W.3 reveals that his statement was recorded at 2.15 a.m. on 05.04.2010. The evidence of P.W.1 is to the effect that he had preferred a written complaint at the police station. Learned counsel for petitioners also submitted that complaint preferred by P.W.1, which had led to be registration of the FIR. The police station is mere 20 kms. from Judicial Magistrate Court. But the complaint had reached Judicial Magistrate only at 5.30 p.m. on 05.04.2010. Raising the ground that the original information has been suppressed, learned counsel for petitioners prays for the grant of relief of suspension of sentence to petitioners herein.

3.Per contra, learned Additional Public Prosecutor, contended that the prosecution has established its case beyond all reasonable doubt and the minor discrepancies found in the evidence of the prosecution witnesses will not affect the prosecution case in its entirety. He strongly opposed to the grant of the relief of suspension of sentence to petitioners. He would add that it is also common now-a-days that neighbours / persons aware of the incident, immediately called the police at No.100 and thereupon police go over to the scene / hospital to make enquires.

4.Accepting such contention as justification for delayed registration of FIR and of putting the cat before the horse ie., recording 161 statement prior to actually bringing the case on record by registering a crime is aught with danger, the better way to go about things would be, upon receiving information of that which is a cognizable offence, immediately even if it would be a single line, register a case and thereafter, proceed further towards gathering details.

5.Considering the facts and circumstances of the case, that it is not possible for the Court to take the Criminal Appeal in the nearest future, that there are arguable points and according to learned counsel for petitioners, there are several infirmities in the prosecution case in respect of petitioners, we are of the considered view that it is a fit case to grant the relief of suspension of sentence to petitioners herein. Keeping in view of these facts, we are inclined to suspend the substantive portion of sentence imposed on petitioners.



6. Accordingly, the substantive sentence of imprisonment alone is suspended in respect of petitioners and they are directed to be enlarged on bail on condition that they shall execute a bond in a sum of Rs.10,000/- [Rupees ten thousand only] with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Thirumangalam, Madurai, and on further condition that petitioners shall report before the said Court on the first working day of every month at 10.30 a.m. pending appeal.

sd/-
16/07/2018

/ TRUE COPY /

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

TO

1. THE IV ADDITIONAL DISTRICT AND SESSIONS JUDGE,
MADURAI.
 2. THE JUDICIAL MAGISTRATE, THIRUMANGALAM,
MADURAI DISTRICT.
 3. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
MADURAI DISTRICT.
 4. THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
 5. THE INSPECTOR OF POLICE,
KALLIKUDI POLICE STATION, MADURAI DISTRICT.
 6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +2. C.C. to M/S.S.PALANI PACKIAM Advocate SR.No.13079
- GJM/CSL/ASVM/20.7.18-3P-9C

ORDER
IN
CRL MP (MD) No.2154 of 2018
IN
CRL A (MD) No.134 of 2018
Date :16/07/2018