



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

Monday, the Nineteenth day of March Two Thousand Eighteen

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PRESENT

The Hon`ble Dr.Justice S.VIMALA
and
The Hon`ble Mrs.Justice T.KRISHNAVALLI

CRL MP(MD) Nos.762 and 915 of 2018
IN
CRL A(MD) Nos.53 and 62 of 2018

CRL MP(MD) Nos.762/2018 CRL A(MD) Nos.53/18:

MURTHY @ POONIYAMURTHY

... PETITIONER/APPELLANT

Vs

THE INSPECTOR OF POLICE
MATHUR POLICE STATION,
PUDUKKOTTAI DISTRICT.
IN CRIME NO.126/2013

... RESPONDENT/RESPONDENT

PRAYER IN CRL MP(MD) No.762/2018 IN CRL A(MD)No.53/2018:

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence in S.C.No. 2/2016 dated 12.12.2017 pending disposal of the Criminal Appeal.

Prayer in CRL A(MD).53/2018 :

To allow the Appeal and acquit the appellant/ Accused no.4 by set aside the Judgment dated 12.12.2017 in S.C.No.2/2016 on the file of the Additional District and Sessions Judge (Presiding officer Special Court For E.C. and NDPS Act, cases) Pudukkottai

CRL MP(MD) No.915 of 2018 IN CRL A(MD)No.62 of 2018:

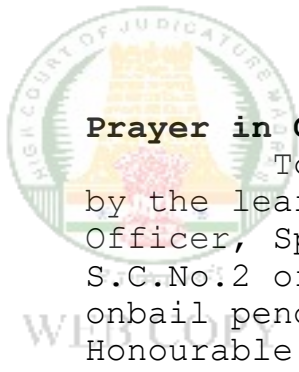
1 RAJENDRAN
2 MUTHALLAGU
3 NADARAJAN

... PETITIONERS/APPELLANTS/
ACCUSED 1 to 3

Vs

STATE BY,
THE INSPECTOR OF POLICE,
MATHUR POLICE STATION,
PUDUKKOTTAI DISTRICT.
(CRIME NO.126 OF 2013)

... RESPONDENTS/COMPLAINANT/
RESPONDENT



Prayer in CRL MP(MD).915/2018 IN CRL A(MD)No.62/2018 :

To suspend the sentence imposed on the petitioners herein by the learned Additional District and Sessions Judge / Presiding Officer, Special Court for EC and NDPS Act Cases, Pudukottai in S.C.No.2 of 2016 by judgment dated 12.12.2017 and enlarge them on bail pending disposal of the above Crl.Appeal on the file of this Honourable Court and thus render justice.

Prayer in CRL A(MD).62/2018:

To set aside the Judgment of the lower court made in S.C.No.2 of 2016 on the file of the Learned Additional District and Sessions Judge/Presiding Officer, Pudukottai dated 12.12.2017 and acquit the appellants herein from the above said charges.

Order : These petitions coming on for orders upon perusing the petitions filed in support thereof and upon hearing the arguments of M/S.P.GANAPATHI SUBRAMANIAN, Advocate for the petitioner IN CRL MP (MD)No.762/2018 IN CRL A(MD)No.53/2018 AND M/S.V.GOPINATH, Senior Counsel for M/S.L.MAHENDRAN Advocate for the Petitioners in CRL MP (MD)No.915/2018 IN CRL A(MD)No.62/2018 and of M/S.R.ANANDHARAJ, Advocate on behalf of the Respondent in both the petitions, the court made the following order:-

Orders Reserved on	14.03.2018
Orders Pronounced on	19.03.2018

[Order of the Court was made by **S.VIMALA, J.**]

Heard the learned Senior Counsel for the petitioners / appellants 1 to 3 in Crl.M.P.(MD) No.915 of 2018, the learned counsel for the petitioner / appellant in Crl.M.P.(MD) No.762 of 2018 and the learned Additional Public Prosecutor appearing for the respondent.

2. These petitions have been filed by A1 to A4, seeking suspension of sentence.

3. The petitioners / appellants 1 to 3 in Crl.M.P.(MD) No.915 of 2018 and the petitioner / appellant in Crl.M.P.(MD) No.762 of 2018 are Accused 1 to 4 in S.C.No.2 of 2016 on the file of the learned Additional District and Sessions Judge / Presiding Officer, Special Court for EC and NDPS Act cases, Pudukottai and they have been convicted and sentenced as follows:

Rank	Penal Provisions	Conviction and Sentence
A1 to A4	Section 120(b) r/w 302 IPC	To undergo life imprisonment with fine of Rs.2,000/- each in default to undergo three months simple imprisonment
	Section 302 IPC	To undergo life imprisonment with fine of Rs.2,000/- each in default to undergo three months simple imprisonment and both the sentences to run concurrently



4. The learned Senior Counsel for the accused would submit that the conviction and sentence imposed on the petitioners / accused is illegal on two grounds viz.,

(i) neither the case is supported by direct evidence nor by circumstantial evidence and therefore, it is the fit case for grant of suspension of sentence;

(ii) that P.W. 1, who is the person, who preferred the complaint himself turned hostile and yet another eye witness P.W. 2 also turned hostile.

5. So far as the circumstantial evidence is concerned, the recovery, which is relied upon by the prosecution is made based on the confession given by the second accused and not by the first accused. In fact, there is no recovery at all from A1. So far as A4 is concerned, even though there is recovery, there is no link evidence connecting the material objects to the crime in question. Based on these facts, it is contended that recovery would not establish the case of the prosecution.

6. The learned Additional Public Prosecutor would submit that the contention with regard to recovery of motor cycle can be given importance, even though RC book has not been recovered to show who is the owner of the vehicle. The contention is that it is the possession of the motor cycle and not the title that is material.

7. The perusal of the judgment of the Court below would go to show that the material witnesses P.Ws.1 & 2 have turned hostile.

8. The motive for the murder as alleged by the prosecution is on two counts, namely,

a) firstly, that father of accused 1 & 2 Sri Ganesan and his brothers Karuppaiah and Thaiamuthu had civil dispute, in which Durairaj helped Karuppaiah to get properties in a Panchayat and so the family of A1 and A2 got the enmity as against the family of Durairaj.

b) secondly that A1 & A2, without the permission of the Government indulged in sand mining and the slain brothers Karthikeyan and Rajesh @ Mahendran, apart from Durairaj and Ramkumar informed the activities of A1 and A2 to the Police and Revenue Authorities and thereby A1 & A2 entertained animosity.

9. The prosecution relies upon the evidence of P.W.3 and P.W.10, who are parents of the slain brothers, to come to the conclusion that there had been motive for the occurrence.

10. The Trial Court relied upon the evidence of P.Ws.3 & 4 for the arrest and recovery of material objects.



11. The first accused had been in Police custody for one day and confession of the A1 has been recorded in the presence of P.W.11 / V.A.O. (Subramanian). Even though nothing has been recovered from A1, the dresses worn by him at the time of incident had been recovered from A2 and A2 is none other than the brother of A1.

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12. The Trial Court has considered the evidence of PW16 / Head Constable, who is working in the District Sniffer Dog Squad. The dog has been taken to the place of occurrence, where there had been dead bodies of Karthikeyan and Rajesh @ Mahendran and the sniffer dog had gone there upto the house of A1 / Rajendran and roamed the house of A1 and a report has been filed in Ex.P10. A2 is the brother of A1.

13. Under the stated circumstances, we are of the view that A1 and A2 are not entitled to suspension of sentence and **the petition in Crl.M.P.(MD) No.915 of 2018 is dismissed in respect of A1 & A2, viz., the petitioners/appellants 1 and 2.** No motive is alleged as against A3 and A4. The sentence imposed against A3 and A4 in S.C.No.2 of 2016 by the learned Additional District and Sessions Judge / Presiding Officer, Special Court for EC and NDPS Act cases, Pudukottai, alone is suspended till the disposal of Criminal Appeal Nos.62 and 53 of 2018 and the 3rd petitioner / A3 (in Crl.M.P.(MD) No.915 of 2018) and the petitioner / A4 (in Crl.M.P.(MD) No.762 of 2018) are ordered to be released on bail on each of them executing a bond for a sum of Rs.10,000/- each and two sureties each for a likesum to the satisfaction of the learned District Munsif-cum-Judicial Magistrate, Keeranur, Pudukottai District (in respect of A3) and to the satisfaction of the learned Additional District and Sessions Judge / Presiding Officer, Special Court for EC and NDPS Act cases, Pudukottai (in respect of A4) and on further condition that the 3rd petitioner / A3 (in Crl.M.P.(MD) No.915 of 2018) and the petitioner / A4 (in Crl.M.P.(MD) No.762 of 2018) shall appear before the respective Courts on the first working day of every English Calendar month at 10.30 a.m until further orders.

14. For the sake of brevity, it is reiterated that Crl.M.P (MD) No.915 of 2018 is partly allowed in respect of A3 alone and Crl.M.P(MD) No.762 of 2018 is allowed.

sd/-

19/03/2018

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



- 1 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE/
PRESIDING OFFICER SPECIAL COURT FOR E.C AND NDPS ACT CASES,
PUDUKKOTTAI
- 2 THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
KEERANUR, PUDUKKOTTAI.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, PUDUKKOTTAI
- 4 THE INSPECTOR OF POLICE,
MATHUR POLICE STATION, PUDUKKOTTAI DISTRICT.
- 5 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY
- 6 THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. C.C. to M/S.P.GANAPATHI SUBRAMANIAN Advocate SR.No.4338
+1. C.C. to M/S.L.MAHENDRAN, Advocate SR.No.4347

ORDER
IN
CRL MP (MD) Nos.762 and 915 of 2018
IN
CRL A (MD) Nos.53 and 62 of 2018
Date :19/03/2018

PK/PN/SAR-4/19.03.2018 : 5P/9C