



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.03.2018

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THE HONOURABLE MRS.JUSTICE S.RAMATHILAGAMCrl.O.P.(MD) No.4284 of 2018

1.Udaiyar @ Sattaiudaiyar
2.Mangala @ Karuppasamy

... Petitioners/ Accused 1&2

-Vs-

State rep. by
Sub Inspector of Police,
Karivalamvanthanallur Police Station,
Tirunelveli District.
Crime No.179 of 2012

...Respondent/ Complainant

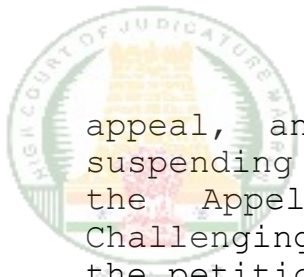
Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the impugned order of the learned Principal Sessions Judge, Tirunelveli passed in Cr.M.P.No.153 of 2018 in Crl.A.No.3 of 2018 in S.C.No.351 of 2015 dated 06.01.2018 set aside the same and suspend the execution of substantive sentence of imprisonment imposed by the learned Assistant Sessions Judge, Sankarankovil by releasing the petitioners/accused till the disposal of the appeal pending in Crl.A.No.3 of 2008 on the file of Principal Sessions Judge, Tirunelveli.

For Petitioners	: Mr.R.J.Karthick
For Respondent	: Mr. Prabhu Ramachandran Government Advocate (Crl.side)

ORDER

This criminal original petition has been filed by the petitioners to call for the records relating to the impugned order of the learned Principal Sessions Judge, Tirunelveli, passed in Cr.M.P.No.153 of 2018 in Crl.A.No.3 of 2018 in S.C.No.351 of 2015 dated 06.01.2018, set aside the same and suspend the execution of substantive sentence of imprisonment imposed by the learned Assistant Sessions Judge, Sankarankovil, by releasing the petitioners/accused till the disposal of the appeal pending in Crl.A.No.3 of 2008 on the file of Principal Sessions Judge, Tirunelveli.

2.The learned counsel appearing for the petitioners have submitted that the petitioners have filed an appeal in Crl.A.No.3 of 2008, before the Principal Sessions Judge, Tirunelveli. In that



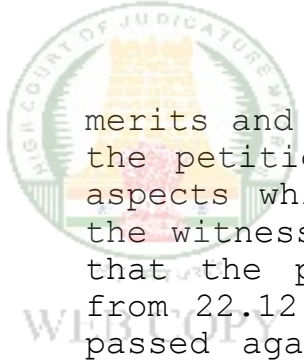
appeal, an application was moved in Cr.M.P.No.153 of 2018 for suspending the sentence imposed by the trial Court. On 06.01.2018, the Appellate Court dismissed the above said application. Challenging that the present criminal original petition is filed by the petitioner.

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3. In support of his argument, the learned counsel for the petitioners submitted that there was a complaint lodged at 7.30 to 07.45 a.m., but there was not mentioned about the earlier complaint received by the police and accordingly to the learned counsel for the petitioners that complaint was suppressed by the respondent police. The next contention is that there were three eye witnesses examined before the trial Court and in their evidence, there are lot of discrepancies regarding the place of the occurrence. There is also discrepancy regarding the nature of the injury sustained by the victim. He would further submit that the witnesses would stated that the injury is simple in nature. In the evidence of P.W.1 to P.W.3, they have stated that these petitioners have caused cut injuries on head on the victim whereas, the Doctor as stated that P.W.1 has sustained cut injury on the back side of the neck. Thus, according to the counsel for the petitioner that there is discrepancy in the evidence of the P.W.1, who is also injured witness and the P.W.9, the Doctor. In other words, he would further submit that the medical evidence is not corroborated by the evidence of P.W.1 with regard to the injury sustained. As regards, the injury sustained by P.W.1, the counsel would submit that it was an injury sustained in a bike accident which has been utilised for the purpose of the manipulating false case against the accused. Only on the strength of the false case, the prosecution had created objects and other materials. On these grounds, he sought for the judgment of the trial Court and prayed for suspension of the sentence imposed by the trial Court.

4. On the side of the respondent, strong objection was made stating that the trial Court, after analysing the evidence and documents marked as rendered the judgment, which is a proper one. The other objection raised by the respondent is that already a criminal revision in CrI.R.C.(MD)NO.126 of 2018 was filed by these petitioners which came to be dismissed by this Court and hence, another petition before this Court is not maintainable.

5. I have considered the contention raised and perused the records produced before this Court. A perusal of the order passed by this Court in CrI.R.C.(MD)No.126 of 2018 dated 07.03.2018 reveals that the criminal revision was dismissed by this Court not on merits but by holding that the order of dismissal of application for suspension of sentence and bail is not final order and is only an interlocutory order. Therefore, no revision is maintainable in view of the bar under Section 397(2) of the Code of Criminal Procedure. This Court also held that it is open to the petitioners to work out their remedy in the manner known to law. Thus, it is clear that the dismissal of the criminal revision cannot be put against the petitioners to deny their right as dismissal of the revision not on



merits and only with regard to the provision that has been chosen by the petitioners. A perusal of the records relating to the various aspects which were recorded by way of evidence, the deposition of the witnesses before the trial Court and also considering the fact that the petitioners are undergoing the sentence of imprisonment from 22.12.2017, this petition is allowed. The order of conviction passed against the petitioners by the learned Assistant Sessions Judge, Sankarankovil in S.C.No.351 of 2015 dated 06.01.2018 is suspended till CrI.A.No.3 of 2008 pending on the file of the learned Principal Sessions Judge, Tirunelveli is disposed of, on further condition that the petitioners has to sign before the appellate Court once in a month.

Sd/-

Assistant Registrar(AD-II)

/True copy/

Sub Assistant Registrar

To

1.The Principal Sessions Judge, Tirunelveli.

2.The learned Assistant Sessions Judge, Sankarankovil.

3.The Sub Inspector of Police,
Karivalamvanthanallur Police Station,
Tirunelveli District.

4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

5. The Superintendent, Central Prison,
Palayamkottai, Tirunelveli District.

+1CC TO M/S.R.J.KARTHICK, ADVOCATE, SR NO.58710

CrI.O.P.(MD) No.4284 of 2018

28.03.2018

cp

MS/SV-MMS/SAR-4/06.04.2018/3P.7c