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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 09.07.2018

DELIVERED ON : 02.08.2018

CORAM :

THE HONOURABLE MRS. JUSTICE R. THARANI

Crl.R.C.(MD) No.308 of 2018

P.Udhaya Suriyan ... Petitioner
vs.

1. Kumar @ Home Guard Kumar
2. State rep by the Inspector of Police,
B-6, Jaihindupuram Police Station (Law and Order),
Madurai Crime No.1283 of 2011 ... Respondents

Prayer:- Criminal Revision Petition filed under Sections 397 r/w. 401 of the Code of Criminal Procedure, 1973, to call for the records in Crl.M.P.No.261 of 2018 in C.A.No.01 of 2018 in S.C.No.182 of 2016 in Crime No.1283 of 2011 dated 11.05.2018 on the file of the learned Vacation Sessions Court, Madurai and set aside the order in Crl.M.P.No.261 of 2018 dated 11.05.2018.

For Petitioner : Mr.S.Thangaraj
For Respondent No.2 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl. Side)
For Respondent No.1 : Mr.C.Ezhilarasu
For Mr.S.Pakalavan

ORDER

Heard Mr.S.Thangaraj, learned counsel appearing for the petitioner, Mr.C.Ezhilarasu, for Mr.S.Pakalavan, learned counsel appearing for the first respondent and Mr.K.Suyambulinga Bharathi, learned Government Advocate (Crl. Side) appearing for the second respondent.

2.This petition has been filed to set aside the order passed in Crl.M.P.No.261 of 2018 in C.A.No.01 of 2018 in S.C.No.182 of 2016 in Crime No.1283 of 2011 dated 11.05.2018 on the file of the learned Vacation Sessions Court, Madurai

3.The case of the petitioner is that the petitioner herein has lodged a complaint against the first respondent for murdering his son due to some political motive and the case in Crime No.1283 of



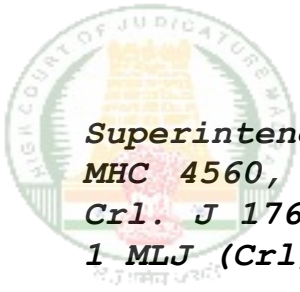
2011 under Sections 341, 324, 307 and 506(ii) of IPC dated 17.11.2011. Six years after the occurrence, the first respondent has murdered the injured eye witness on 26.05.2017 and this murder case was pending before the learned I Additional District Judge, Madurai in S.C.No.373 of 2017.

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4. In this circumstance, the first respondent filed a petition in Crl.M.P.No.261 of 2016 for suspension of sentence before the Vacation Sessions Court and the same was allowed. On the side of the petitioner, it is stated that the first respondent was convicted under Sections 341, 307 and 506(ii) of IPC in S.C.No.182 of 2016 and against the order, an appeal in C.A.No.1 of 2018 is pending before the I Additional District Judge, Madurai. It is further stated that eye witness in Crime No.1283 of 2011 is the son of the petitioner. The first respondent murdered the eye witness on 26.05.2017 and the case in S.C.No.373 of 2017 is pending against the first respondent before the learned I Additional District Judge, Madurai.

5. It is further stated that P.Ws.1 to 5 were examined in S.C.No.373 of 2017 and the case is posted for examination of the Investigating Officer. It is further stated that the petitioner filed a petition for cancellation of the bail application before this Court in Crl.O.P.(MD)No.2843 of 2017 in Crl.M.P.(MD)No.4198 of 2011 in Crime No.1283 of 2011 and the same was allowed on 10.04.2017. The first respondent filed a Special Leave Petition before the Hon'ble Supreme Court in S.L.P.(Crl)No.4265 of 2017 and the same was dismissed by the Apex Court on 23.05.2017. The first respondent was detained under the 'Goondas Act' as per the order in No.47/BCDFGISSSV/2016 dated 20.07.2016. It is further stated that if the first respondent is released, he will be a threat to the petitioner's family members and there is every chance for the petitioner being murdered by the first respondent. The life of the petitioner and his family members and witness in this case are now questionable and prayed that the suspension of sentence order is to be set aside.

6. On the side of the first respondent, it is stated that the respondent is entitled for the right of liberty and when the appeal is pending, the sentence is questionable. There is no complaint lodged against the first respondent for threatening the witness. No document is filed to show that the first respondent is threatening the petitioner or his family members or the witness and mere threatening is not sufficient to cancel the bail and there is no such condition for cancellation of bail under the ground of threatening. It is further stated that the first respondent is complying with the condition regularly. The only relief available for the petitioner is to ask for the direction to complete the case with in a stipulated time. In support, Judgments passed by this Court in the cases of **State rep. By Deputy**



Superintendent of Polce v. Kannan and Others reported in **CDJ 2015 MHC 4560**, **Natturasu and others v. The State** reported in **1998 0 Cr1. J 1762** and **P.Kalyanasundaram v. the State** reported in **(2007) 1 MLJ (Cr1) 1101** are cited.

7. On the side of the second respondent, it is stated that the first respondent has murdered an eye witness in this case S.C.No.373 of 2017 is pending before the I Additional District Judge, Madurai against the first respondent. The first respondent is a rowdy and he is having five previous cases.

8. On the side of the first respondent, it is stated that all the five cases were already disposed of.

9. Records perused. A perusal of the records reveals that the petitioner was convicted under Sections 341, 307 (2 counts) and 506 (ii) of IPC.

10. It is stated that the first respondent murdered the eye witness in this case and a murder case is registered against the first respondent which is pending in S.C.No.373 of 2017. The first respondent is involved in five previous cases and already 'Goondas Act' was invoked against the first respondent and the bail order given in Crime No.1283 of 2011 was cancelled by this Court. Considering all these facts, there is a threat for the life of the petitioner and his family members and also for the witness in S.C.No.373 of 2017, this Court deems it fit to cancel the order of suspension of sentence passed by the Principal District and Sessions Court, Madurai till the disposal of the case S.C.No.373 of 2017. The trial Court is directed to dispose the case in S.C.No.373 of 2017 within a period of four months. The Registry is directed to sent the copy of this order to the trial Court for taking further steps in accordance with law.

11. The trial Court is directed to take appropriate steps so as to the incarcerate the first respondent in prison to serve out the remaining period of sentence in S.C.No.182 of 2016. The order passed by the Vacation Sessions Judge, Madurai in Cr1.M.P.No.261 of 2016 is hereby set aside and this Criminal Revision Case is disposed of accordingly.

Sd/-

Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-III)

To
<https://hcservices.ecourts.gov.in/hcservices/>

1. The I Additional District Judge, Madurai.



2. The Third Additional Assistant Sessions Judge,
Madurai.

3. The Vacation Sessions Judge, Madurai.

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4. The Inspector of Police,
B-6, Jaihindupuram Police Station (Law and Order),
Madurai.

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

+1cc to Mr.S.Thangaraj, Advocate Sr.No.77125

+1cc to Mr.S.Pakalavan, Advocate Sr.No.76763

MRN

VB/SKN/SAR3/29.08.2018/4P/8C

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