

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twenty Second day of August Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M.M.SUNDRESH

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION NOS.4960 & 5020 OF 2019

IN CRL A.202 & 205 OF 2019

1 ILANGO [PETITIONER /APPELLANTS / ACCUSED
2 ARUMUGAM IN CRL.MP.NO.4960 OF 2019
3 RAGU IN CRL.A.NO.202 OF 2019]
4 IYYANAR
5 PERIYANNAN

1 RAJKUMAR [PETITIONER /APPELLANTS / ACCUSED
2 VETRIVEL IN CRL.MP.NO.5020 O 2019
3 SUGAN IN CRL.A.NO.205 OF 2019]
4 KAVIRAJ

Vs

STATE REPRESENTED BY [RESPONDENT
THE INSPECTOR OF POLICE, IN BOTH THE PETITIONS]
BAHOUR POLICE STATION,
CR.NO.152/2009,
PUDUCHERRY.

Petitions praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.202 & 205 OF 2019 on the file of the High Court, the High Court will be pleased to

[i] suspend the sentence of imprisonment imposed on the petitioners by judgment dated.27.03.2019 and made in S.C.No.21/2011 on the file of the II Additional Sessions Judge at Puducherry and enlarge the petitioners on bail pending disposal of the above CRL.A.NO.202 OF 2019 [IN CRL.MP.NO.4960 OF 2019]

[ii] suspend the sentence of imprisonment imposed on the petitioners by the Judgment made in SC.No.21 of 2011 dated 27.03.2019 by the Learned II Additional Sessions Judge, Puducherry and enlarge the petitioners on bail pending disposal of the above CRL.A.NO.205 OF 2019 [IN CRL.MP.NO.5020 OF 2019]

Order : These petitions coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.Revision Case No. on the file of the High Court and upon hearing the arguments of MR.V.GOPINATH SENIOR COUNSEL FOR M/S.MAHANDRAN L., Advocate [IN CRL.MP.NO.4960 OF 2019 IN CRL.A.NO.202 OF 2019 and M/S.R.JOHN SATHYAN, Advocate [IN CRL.MP.NO.5020 OF 2019 IN CRL.A.NO.205 OF 2019] for the petitioner and of MR.V.BALAMURUGANE, ADDITIONAL PUBLIC PROSECUTOR [PONDICHERY] on behalf of the Respondent [IN BOTH THE PETITIONS], the court made the following order:-

[Order of the Court was made by JUSTICE M.M.SUNDRESH]

The petitioners in Crl.M.P.No.4960 of 2019 are A1 to A4 and A8 and the petitioners in Crl.M.P.No.5020 of 2019 are A5 to A7 and A9 in S.C.No.21 of 2011 on the file of the learned II Additional Sessions Judge, Puducherry. After full-fledged trial, by judgement dated 27.03.2019, the learned Additional Sessions Judge has convicted the petitioners for offence punishable under Sections 148, 302 r/w 149 IPC (Two counts), 307 r/w 149 of IPC (Two counts), 427 r/w 149 of IPC and 326 r/w 149 of IPC and sentenced them to rigorous imprisonment for 3 years and to pay a fine of Rs.1,000/- each in default to suffer simple imprisonment for 3 months for offence under Section 148 of IPC; life imprisonment for each count and to pay a fine of Rs.5,000/- each (for each count) in default to suffer simple imprisonment for one year for offence under Section 302 r/w 149 of IPC (Two counts); rigorous imprisonment for 10 years each (for each count) and to pay a fine of Rs.2,000/- each (for each count) in default to suffer simple imprisonment for six months for offence under Section 307 r/w 149 of IPC (Two counts); and rigorous imprisonment for one year and to pay a fine of Rs.1,000/- each in default to undergo simple imprisonment for two months for offence under Section 427 r/w 149 of IPC. The learned Judge though found all the accused guilty of offence under Section 326 r/w 149 of IPC, he has decided not to impose a separate sentence thereunder in view of the sentence imposed for offence under Section 307 r/w 149 of IPC. Challenging the same A1 to A4 and A8 is before this court with Crl.A.No.202 of 2019 while A5 to A7 and A9 are before this court with Crl.A.No.205 of 2019. Seeking suspension of sentence, the petitioners/appellants are before this court with these miscellaneous petitions.

2. The learned counsel for the respective petitioners submitted that it is a case involving case and counter case. The First Information Report given at the instance of the petitioners against the deceased and the other witnesses has not been taken into consideration at the time of investigation by the prosecuting agency. Even P.W.4 speaks about the injuries sustained by the accused party in this case. A1, A3 and A4 are injured witnesses. Only on behalf of the defence, the FIR in the counter case has been marked. A1 sustained serious injuries. He was initially admitted in the Government Hospital and thereafter, shifted to Apollo Hospitals for treatment. As per the evidence of P.W.13 in the counter case, A1 in the present case has sustained the following injuries:- (1) A deep cut injury on the left side of neck 7 x 1.5 c.m., (2) A cut injury on the right side of abdomen 5 cm x 1 c.m., (3) A cut injury on the left side of chest 4 cm x 1 c.m. and (4) A cut injury on the right parieto temporal region. Similarly, A3 has sustained a cut injury on his right forearm length measuring 5 c.m. x 1 c.m. Insofar as A4 is concerned, P.W.13 in the other case, has stated that he had suffered grievous injuries. In such view of the matter, the offence punishable under Section 302 of IPC would not get attracted. Thus, according to the learned counsel, there are arguable points in the appeal for acquittal and, therefore, the suspension of sentence petition will have to be allowed.

3. Per contra, the learned Additional Public Prosecutor submitted that in the other case in which the case has been registered at the instance of the present petitioners, the trial court has recorded an order of acquittal. Both the accused party as well as the deceased along with some of the eye witnesses were carrying on illicit transport of sand. Pursuant to the dispute arose between them, the offence has been committed by the petitioners. As the trial court considered the relevant materials available and convicted and sentenced the petitioners, the petitions for suspension of sentence will have to be dismissed, especially, when the eyewitness are available and the evidence of the eye witnesses are cogent and convincing.

4. In the connected case in S.C.No.68 of 2010, P.Ws.1 to 5 in the present case were arrayed as accused. For the reasons known, the prosecuting agency had not marked the documents, namely the FIR given against P.Ws.1 to 5, Wound Certificate and Accident Register. Though there was an order of acquittal recorded by the trial court, the same by itself cannot be a ground to haul the petitioners/appellants for the offence under Section 302 of IPC. This is our prima facie view. Thus, we find that there are substantial points involved to be adjudicated in the appeals, especially, on a perusal of the evidence of the Investigating Officer, who himself has acknowledged that the complaint made on behalf of the petitioners is the earlier one and the A1 has suffered grievous injuries.

5. Considering the above, we are inclined to allow these petitions. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that the petitioners execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of II Additional Sessions Judge, Puducherry, and on further condition that the petitioners shall appear before the said Court on the first working day of every month at 10.00 a.m., pending appeals.

-sd/-
22/08/2019

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 II ADDITIONAL SESSIONS
JUDGE, PUDUCHERRY.

2 THE SUPERINTENDENT,
CENTRAL PRISON, PONDICHERRY.

3 THE PUBLIC PROSECUTOR
PUDUCHERRY.

4 THE INSPECTOR OF POLICE,
BAHOUR POLICE STATION,
PUDUCHERRY.

+3C.C. to M/S.MAHANDRAN L. Advocate on payment of necessary charges SR NO.17499

+3C.C. to M/S.R.JOHN SATHYAN Advocate on payment of necessary charges SR NO.17500

Order

in

CRL MP.4960 & 5020 OF 2019

in

CRL A.202 & 205 OF 2019

Date :22/08/2019

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