

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Fourteenth 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 No.7584 of 2019

IN CRL A.338/2019

1 PRASAD @ PANAI PRASAD
2 SHANKAR RAJ

[PETITIONERS]

Vs

THE INSPECTOR OF POLICE
E3 TEYNAMPET POLICE STATION,
CHENNAI-600 006.
CR.NO.1907 OF 2011

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.338/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner by order dated 15.04.2019 in SC No.448 of 2011 on the file of the Learned II Additional Sessions Judge, Chennai and release the petitioner on bail till the disposal of the above appeal.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.338/2019 on the file of the High Court and upon hearing the arguments of M/S.R.C.PAUL KANAKARAJ Advocate for the petitioner and of MR.R.PRATJAP KUMAR ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

(Order of the Court was made by M.M.SUNDRESH,J)

The petitioners have been arrayed as A2 and A3 for the major offences punishable under Sections 341 and 302 r/w 34 IPC in S.C. No.448 of 2011 on the file of the learned II Additional Sessions Judge, Chennai. The trial Court, convicted the petitioners for the offence punishable under Section 341 IPC and sentenced to undergo one month simple imprisonment and to pay a fine of Rs.500/- each in default to undergo simple imprisonment for one week and for the offence punishable under Section 302 r/w 34 IPC sentenced to undergo life imprisonment and to pay a fine of Rs.5,000/- each, in default to undergo rigorous imprisonment for a period of six months and ordered the sentences to run concurrently.

2. The case of the prosecution is that A1 called the deceased out of the home and pursuant to the wordy quarrel attacked him with the broken glass which was lying nearby. The petitioners who have been arrayed as A2 and A3 were standing nearby and instigated A1. The trial Court, convicted all the accused. Seeking to suspend the sentence, the present petition has been filed.

3. The learned counsel appearing for the petitioners would submit that the witnesses turned hostile. However, they have not been treated as such. They have not spoken about any specific overt act attributed against the petitioners. There is no material to establish the existence of common intention. Therefore, suspension of sentence will have to be granted.

4. The learned Additional Public Prosecutor appearing for the State would submit that the trial Court considered the evidence available on record including the eye witnesses. Though A1 is the one, who attacked the deceased and committed the offence, he has been instigated by A2 and A3. In such view of the matter, the petition filed will have to be dismissed.

5. We have perused the entire records. The overt act attributed against the petitioners is that they instigated A1 to commit the offence. A1 is stated to have attacked the deceased with broken glass which was found nearby. It is A1 who took the deceased out of the house. The trial Court has also observed from the evidence of P.W.2 that all the three accused were found quarrelling with the deceased by shouting.

6. Considering the above, we find that there are substantial issues involved to be decided in the appeal coupled with the specific overt act attributed against the petitioners. In such view of the matter, we are inclined to suspend the sentence. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that each of the petitioners executes a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of XVIII Metropolitan Magistrate, Saidapet, Chennai and on further condition that the petitioner shall appear before the concerned Court on all the working days at 10.00 a.m., pending appeal.

-sd/-

14/08/2019

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, CHENNAI

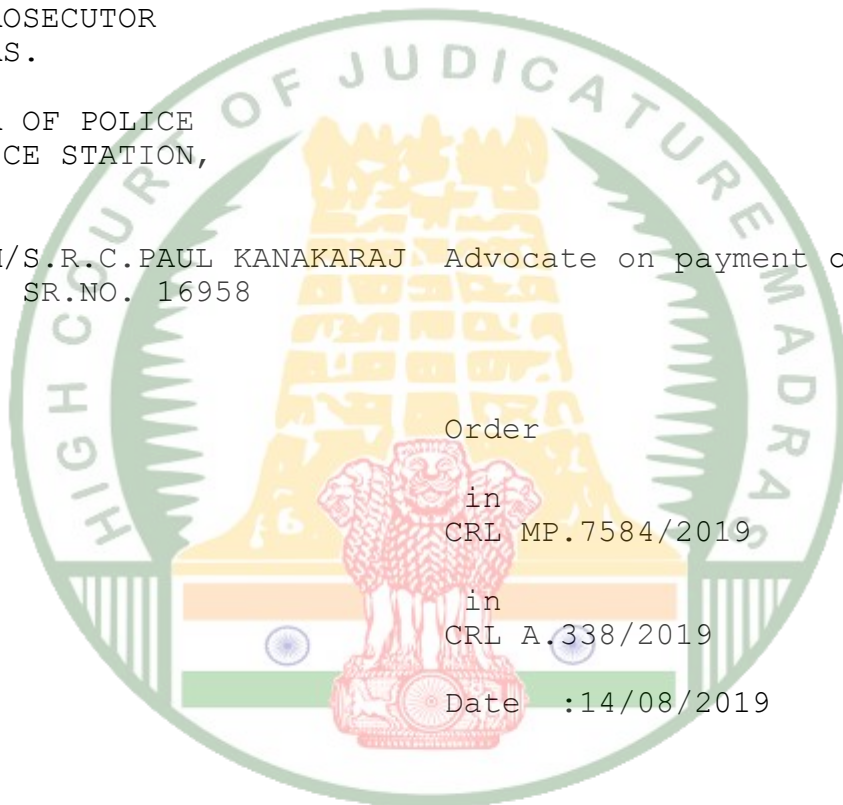
2 THE XVIII METROPOLITAN
MAGISTRATE, SAIDAPET, CHENNAI

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE
E3 TEYNAMPET POLICE STATION,
CHENNAI-600 006.

+2 C.C. to M/S.R.C.PAUL KANAKARAJ Advocate on payment of
necessary charges SR.NO. 16958



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RD 14/08/2019

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