

IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Criminal Jurisdiction )

Wednesday, the Tenth day of July 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.8986 of 2019

in CRL.A.446 of 2018

SIVAMANI

[ PETITIONER / APPELLANT ]

Vs

STATE BY

[ RESPONDENT ]

THE INSPECTOR OF POLICE,  
NELLIKKUPPAM POLICE STATION,  
CUDDALORE DISTRICT,  
(CR.NO.76 OF 2016  
ON THE FILE OF NADUVERAPPATTU P.S.).

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.446 of 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed against the petitioner on 6.2.2018, in S.C.No.243/2016 on the file of the 1st Additional District and Sessions Court, Cuddalore and release the petitioner on bail till the disposal of the CRL.A.446 of 2018

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.446 of 2018 on the file of the High Court and upon hearing the arguments of M/S.P.PUGALENTHI, Advocate for the petitioner, and of MR.R.PRATHAP 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 petitioner is the sole accused in S.C. No. 243 of 2016. The I Additional District and Sessions Court, Cuddalore, by judgment dated 06.02.2018 convicted the petitioner for the offence punishable under Section 364 IPC and sentenced to undergo seven years rigorous

imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months rigorous imprisonment, for the offence punishable under Section 302 IPC, sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months rigorous imprisonment and for the offence punishable under Section 201 IPC, sentenced to undergo two years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo six months rigorous imprisonment. The sentences were ordered to run concurrently. Seeking suspension of sentence, the present petition has been filed.

2. The charge against the petitioner is that in pursuance of the dispute arose over the non-payment of money borrowed by the petitioner from the deceased and in intoxicated mood, while both the parties were liquored, the deceased was attacked with wooden log and shovel, committed the offence.

3. The learned counsel appearing for the petitioner submits that it is a case of circumstantial evidence. The motive has not been established though P.W. 1 to P.W. 5 speak about it. The petitioner and the deceased were relatives. The viscera report does not indicate the existence of alcohol in the body of the deceased. The petitioner has been in incarceration from 06.02.2018 onwards. There was sufficient points to be argued in the appeal. Thus, the suspension of sentence petition will have to be allowed.

4. The learned Additional Public Prosecutor would submit that it is a case of circumstantial evidence. P.W.1 has stated even in the complaint under Ex. P1 that the deceased has informed about going to the house of the petitioner. Recovery has been made pursuant to the confession made to P.W.7. There is evidence to show that the deceased was last seen with the petitioner. Therefore, this petition will have to be dismissed.

5. We do find arguable points involved in the appeal. The petitioner has been in incarceration from 06.02.2018 onwards. We are dealing with a case of circumstantial evidence. We also find that the viscera report does not indicate the existence of alcohol body of the deceased.

6. Considering the above, the substantive sentence of imprisonment alone is suspended on condition that the petitioner 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 I Additional District and Sessions Court, Cuddalore and on further

condition that the petitioner shall appear before the said Court on the first working day of every month at 10.00 a.m., pending appeal.

-sd/-  
10/07/2019

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 I ADDITIONAL DISTRICT AND SESSIONS JUDGE,  
CUDDALORE

2 THE PUBLIC PROSECUTOR  
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,  
NELLIKKUPPAM POLICE STATION,  
CUDDALORE DISTRICT

4 THE SUPERINTENDENT,  
CENTRAL PRISON, CUDDALORE

+1 C.C. to M/S.P.PUGALENTHI Advocate on payment of necessary charges SR.NO.14026

Order

in  
CRL MP.8986/2019  
in  
CRL.A.446/2018

Date :10/07/2019

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cm 11/07/2019