

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Third day of September Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M.M.SUNDRESH

and

The Hon`ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION No.13409 of 2019

IN CRL.A.NO.291 OF 2018

1 KOLANJINATHAN [PETITIONERS]
2 JEYAKUMAR
3 CHENNAIYAN @ RAJASEKARAN

Vs

THE STATE REP BY ITS, [RESPONDENT]
THE INSPECTOR OF POLICE,
KUNNAM POLICE STATION,
PERAMBALUR DISTRICT.
CR.NO.427 OF 2015.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.291/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on them by the Learned Principal Sessions Judge, Perambalur, Perambalur District dated 15.03.2018 made in S.C.No.6/2017 on their file and enlarge them on bail pending disposal of the above Crl.A.No.291/2018.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.291/2018 on the file of the High Court and upon hearing the arguments of M/S.L.MAHENDRAN, 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 petitioners are A1, A2 and A3 among the five accused charged for the major offence punishable under Section 302 IPC in S.C.No.06 of 2017 on the file of Principal District and Sessions Judge, Perambalur. The trial Court, by judgment dated 15.03.2018 while rendering conviction for life as against the petitioners, acquitted A4 and A5. The trial Court convicted the petitioners for the offence punishable under Section 302 IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.1,000/- each , in default, to undergo one year imprisonment. Seeking to suspend the sentence awarded by the trial Court, the present petition has been filed.

2. The learned counsel appearing for the petitioner submitted that there was a civil dispute between the parties. The parties were relatives. Civil suits are also pending inter se parties. A1 is the father, A3 is the son and A2 is the relative. There is no specific overt act attributed against these petitioners. Even otherwise, the offence punishable under Section 302 IPC would not be made out. The Accident Register would suggest that the deceased was attacked by five men and four women. However, only five men have been arrayed as accused. Thus, the suspension of sentence will have to be granted especially for more than 1 1/2 years, the petitioners are under incarceration.

3. The learned Additional Public Prosecutor appearing for the State would submit that there are eye witnesses viz., P.Ws.1, 5 and 7. It is not correct to state that there is no specific overt act attributed against the petitioners. A1 attacked the deceased with wooden log viz., M.O.1. Similarly, A2 attacked with iron rod - M.O.3 and A3 attacked the deceased with M.O.2 - wooden log. The recovery has also been proved pursuant to the statement made before the Village Administrative Officer. The trial Court considered this aspect while convicting the petitioners. Hence, the petition will have to be dismissed.

4. Admittedly, the petitioners have been under incarceration for more than 1 ½ years. It is also the case of the prosecution that there is a civil dispute which also inclusive of civil suits filed. The overt act attributed against the petitioners is that they attacked the deceased with wooden log and iron rod. The occurrence has also happened in the disputed place. Therefore, the question to be considered is as to whether the offence even assuming it is true would attract Section 302 IPC or other wise. Now, more than 1 ½ years has elapsed. Thus we are of the view that there are arguable points available in the appeal.

5. Considering the above and coupled with the period of incarceration of the petitioners, we are inclined to suspend the sentence. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that each of 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 the Judicial Magistrate, Perambalur and on further condition that the petitioners shall appear before the concerned Court on the first working day of every month at 10.00 a.m., pending appeal.

-sd/-
23/09/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

TO

1 THE JUDICIAL MAGISTRATE,
PERAMBALUR

2 THE CHIEF JUDICIAL MAGISTRATE
PERAMBALUR [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
KUNNAM POLICE STATION,
PERAMBALUR DISTRICT,

5 THE PRINCIPAL DISTRICT AND
SESSIONS JUDGE, PERAMBALUR

6 THE SUPERINTENDENT,
CENTRAL PRISON, TIRUCHIRAPALLI

C.C. to M/S.L.MAHENDRAN Advocate on payment of necessary
charges

Order

in

CRL MP.13409/2019

in

CRL.A.291/2018

Date : 23/09/2019

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