

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Thirty First day of October 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.15168 of 2019

IN CRL.A.NO.488 OF 2019

1 JACOB
2 CHARLES

[PETITIONERS]

Vs

STATE REPRESENTED BY [RESPONDENT]
THE INSPECTOR OF POLICE,
V-5, THIRUMANGALAM POLICE STATION,
CHENNAI-101.
CR.NO.97/2008.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.488/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed against the petitioners in Criminal Appeal No.5/2011 passed by Learned II Additional Sessions Judge, Chennai dated 25.07.2019 and enlarge them on bail pending above Crl.A.NO.488/2019. [CRL.MP.NO.15168/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.488/2019 on the file of the High Court and upon hearing the arguments of M/S. G.ANBUCHEZHAIYAN Advocate for the petitioner and of MR.K.PRABAKAR ADDL. PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

[Order of the Court made by M.M.SUNDRESH, J.]

Petitioners have been arrayed as A6 and A9 in S.C.No.5 of 2011 on the file of the II Additional Sessions Judge, Chennai, and accordingly, the trial Court, by judgment dated 25.07.2019, convicted the Petitioners for the offence punishable under Sections 147, 149, 302 r/w 149 IPC, **and** sentenced to undergo *six months' Rigorous Imprisonment*, each for the offence under Section 147 I.P.C. and fine of Rs.1000/-, in default to undergo *three months' Simple Imprisonment*, each, **and** for the offence under Section 149 I.P.C., one month *Simple Imprisonment* each, **and** for the offence under Section 302 r/w 149 I.P.C., sentenced to undergo *Life Imprisonment* and to pay a fine of Rs.2,000/- each, in default, to undergo *Simple Imprisonment*

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for a period of three months, each. Seeking suspension of sentence, the present Petition has been filed.

2. The case of the prosecution is that the deceased developed intimacy with the wives of A1 and A4. In view of the above, all the accused joined together at the instance of A1, A2 and A4, and committed the offence. In the complaint given, only the names of A1 to A5 and A9 have been mentioned. A complaint has been given by P.W.1, the brother of the deceased.

3. Learned counsel for the Petitioners submitted that P.Ws.2 to 5 have turned hostile. The evidence of P.W.1 ought not to have been accepted by the trial Court. P.W.1 has deposed that he had given a complaint earlier, which had been suppressed. Even in the subsequent complaint given on 12.02.2008, for the occurrence said to have taken place on 11.02.2018, at 7.00 p.m., only a few names have been mentioned. He has further deposed that he did not know as to whether all the accused committed the offence. It is his evidence that, he cannot say whether 5 or 6 or 8 persons were involved in the occurrence. Therefore, his witness cannot be accepted, while rendering conviction against the Petitioners.

4. Insofar as the evidence of P.W.27 is concerned, he being a Doctor, who treated the deceased before his death, he has informed that, only one unknown person has attacked the deceased and it is P.W.3, who admitted the deceased in the Hospital.

5. Learned counsel for the Petitioners further submitted that there are number of points available in the Appeal and therefore, the sentence imposed upon the Petitioners will have to be suspended.

6. Learned Additional Public Prosecutor appearing for the State submitted that, P.W.1 has deposed that he was present at the time of taking the deceased to the Hospital. Merely because, P.W.3 has admitted the deceased in the Hospital, the evidence of P.W.1 cannot be eschewed. Similarly, P.W.1, the brother of the deceased, cannot be termed as independent witness. The trial Court has considered all the materials available on record, while rendering conviction and hence, the above Petition will have to be dismissed.

7. From the submissions made, we find considerable points available in the Appeal. Even in the complaint given by P.W.1, which has been registered, initially the names of A1 to A5 have been mentioned and thereafter, the name of A9 has been mentioned. P.W.1 has stated that since those names have been left out, they have been added subsequently. P.W.1, as stated above, was not very clear as to the number of persons who attacked the deceased, i.e. 5, 6 or 8. It is his evidence that he did not know as to whether the accused committed the offence. A statement has been obtained from him when he was available in the Police Station. We find that P.Ws.2 to 5 have turned hostile. P.W.27 is a Doctor, before whom, the deceased was brought. The Accident Register would show that P.W.3 is one, who took the deceased to P.W.27. P.W.27 has also deposed that he was informed that an unknown person has attacked the deceased.

8. From the above, we are of the view that there are other points available in the Appeal. Thus, on a *prima facie* consideration, we are inclined to suspend the sentence imposed upon the Petitioners herein, i.e. A6 and A9.

9. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that the Petitioners/A6 and A9 execute **separate bonds for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each** for a like sum to the satisfaction of **II Additional Sessions Court, Chennai** and on further condition that **the Petitioners shall initially appear before the Town Police Station, Trichy, daily at 10.30 a.m. for a period of four weeks and thereafter, before the II Additional Sessions Court, Chennai, on the first working day of every month at 10.00 a.m., pending Appeal.**

10. We make it clear that the above observations are made only for considering the suspension of sentence imposed upon the Petitioners herein. We are quite conscious of the fact that the Petitioners herein have been charged under Section 302 I.P.C. r/w 149 I.P.C. Therefore, a word of caution is always required to be followed, whenever, an Accused is charged under Section 149 I.P.C.

This Miscellaneous Petition is allowed with the above observation.

-sd/-

31/10/2019

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 ADDITIONL SESSIONS COUR
CHENNAI

2 THE SUPERINTENDENT,
CENTRAL PRISON, (CONVICTION CELL)
PUZHAL, CHENNAI

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

WEB COPY

4 THE INSPECTOR OF POLICE,
V-5, THIRUMANGALAM POLICE STATION,
CHENNAI-101.

5 THE OFFICER INCHARGE
TOWN POLICE STATION, TRICHY,

+2 C.C. to S.SURESH Advocate on payment of necessary charges
SR.NO. 22336

Order

in
CRL MP.15168/2019

IN CRL.A.NO.488 OF 2019

Date :31/10/2019

From 7.2.2001 the Registry is issuing certified
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RD 31/10/2019



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