

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the First day of November 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.15499 of 2019

IN CRL.A.NO.23 OF 2018

BALAKRISHNAN

[PETITIONER]

Vs

THE STATE REP BY ITS,
INSPECTOR OF POLICE,
ANAMALAI POLICE STATION
(CRIME NO. 414/2016)

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.23/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence convicting the petitioner/Appellant to undergo Life imprisonment and to pay a fine of Rs.5,000/- for the offence u/s. 302 IPC in default to undergo simple imprisonment of three months and further sentenced to undergo Rigorous imprisonment for one year for the offence under section 506(II)IPC, concurrently made in S.C.NO.68 OF 2017 dated 21.11.2017 on the file of the first Additional district and sessions Judge,coimbatore.[CRL.MP.NO.15499/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.23/2018 on the file of the High Court and upon hearing the arguments of M/S. DASS AND VISWA ASSOCIATES, 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 was made by M.M.SUNDRESH,J)

The petitioner has been arrayed as sole accused in S.C.No. 68 of 2017 on the file of I Additional District and Session Judge, Coimbatore. The trial Court, by judgment dated 21.11.2017 convicted the petitioner for the offence punishable under Sections 302 and 506 (ii) IPC and for the offence punishable under Section 302 IPC sentenced him to undergo life imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo three months simple imprisonment and for the offence punishable under Section 506(ii) IPC sentenced him to undergo one year rigorous imprisonment and ordered the sentences to run concurrently. Seeking suspension of sentence imposed, the present

petition has been filed.

2. The deceased and the petitioner are brothers. One, Aruchamy Gounder, who, is the father of the petitioner and the deceased had six children. He executed a settlement deed in favour of three children including the petitioner and the deceased. However, the said document was in possession of the petitioner alone. The deceased was insisting that the said document will have to be handed over to him.

3. On the date of occurrence - 09.10.2016, the deceased insisted to hand over the document, pursuant to which, a wordy quarrel occurred between the petitioner and the deceased. Thereafter, the petitioner attacked the deceased with sickle by committing the offence. The trial Court convicted the petitioner for the offence punishable under Section 302 r/w 506(ii) IPC.

4. The learned counsel appearing for the petitioner would submit that the petitioner has been under incarceration from the date of the judgment - 21.11.2017. Now, nearly two years have elapsed. The presence of P.W.1, who is also the brother of the petitioner and the deceased as well as P.W.2 is doubtful. Even assuming they were inside the house, they would not have seen the occurrence. Therefore, the sentence imposed will have to be suspended.

5. The learned Additional Public Prosecutor appearing for the State would submit that P.Ws. 1 and 2 are the eye witness. Upon hearing the cry of the deceased, they came out and saw the occurrence. It is not a single injury but the doctor who has done post-mortem found four injuries. Thus, this petition will have to be dismissed.

6. Admittedly, the petitioner has been under incarceration for more than two years. *Prima facie*, we are of the view that there was a fight prior to the alleged occurrence.

7. Considering the above coupled with the period of incarceration of the petitioner, we are inclined to suspend the sentence. Accordingly, 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 the I Additional District and Sessions Judge, Coimbatore and on further condition that the petitioner shall appear before the concerned Court on the first working day of every month at 10.00 a.m., pending appeal.

-sd/-

01/11/2019

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.

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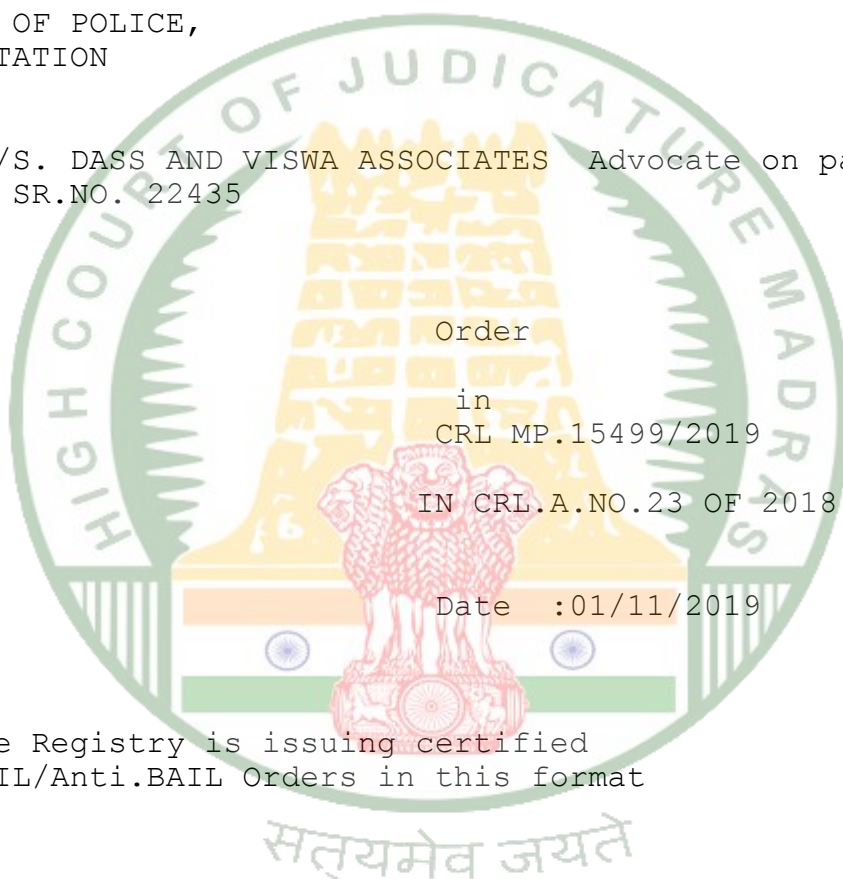
1 THE I ADDITIONAL DISTRICT AND
SESSIONS JUDGE, COIMBATORE

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
ANAMALAI POLICE STATION

+1 C.C. to M/S. DASS AND VISWA ASSOCIATES Advocate on payment of
necessary charges SR.NO. 22435



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