

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twenty 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.16983 of 2019

IN CRL.A.NO.629/2019

RAJESH

[PETITIONER]

Vs

STATE BY

INSPECTOR OF POLICE,
K.V.KUPPAM POLICE STATION,
VELLORE DISTRICT,
(CRIME NO.105 OF 2008).

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.629/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence passed in SC NO. 125/2019 dated 27/08/2019 convicting the appellant by the I Additional District and Sessions Judge, Vellore, Vellore District enlarged in bail pending disposal of the above Crl.Appeal No.629/2019.[CRL.MP.NO.16983/2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.629/2019 on the file of the High Court and upon hearing the arguments of M/S. R.THAMARAI SELVAN, 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 A7 in S.C.No.125 of 2009 on the file of the I Additional District and Sessions Judge, Vellore, Vellore District. The trial Court, by judgment dated 27.08.2019 convicted the petitioner along with A6 for the offence punishable under Sections 364, 302 and 201 IPC, sentenced to undergo ten years rigorous imprisonment and to pay a fine of Rs.3,000/, in default, to undergo rigorous imprisonment for a further period of two months for the offences punishable under Section 364 of IPC and convicted and sentenced to undergo imprisonment for life and to pay a fine of

Rs.5,000/-, in default, to undergo rigorous imprisonment for further period of three months for the offence under Section 302 IPC and convicted and sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for further period of one month for the offence under Section 201 IPC. Seeking suspension of sentence imposed, the present petition has been filed.

2. The case of the prosecution is that A1 and the deceased was having money dispute. The deceased gave complaint against A1 which has been registered. In pursuant to the said complaint thereon, A1 took all the other accused including the petitioner and committed the offence by pressing the face of the deceased on the sand. The overt act attributed against the petitioner is that he caught over the hands of the deceased.

3. The learned counsel appearing for the petitioner submitted that this is a case of circumstantial evidence. The last seen theory has been put forth by PW4 and PW5. Though they have stated to have given confession statement of 05.04.2008, the same has reached the court only on 23.08.2008. The Investigating Officer, in his evidence has set out that he is not able to recollect anything. Once these two witnesses are not rendered by the Trial Court, these two witnesses are held to be not reliable. Thus, the very case of the prosecution would fall to the ground. Therefore, notwithstanding the fact that this is the second application, the suspension of sentence will have to be granted to the petitioner.

4. The learned Additional Public Prosecutor appearing for the State submitted that this is a circumstantial evidence which is followed by recovery. The witnesses speak about the recovery made. This is the second application filed. The trial Court, considered the materials available and rendered the conviction. Thus, this petition will have to be dismissed.

5. We do find arguable points available in the appeal. PW4 and PW5 are witnesses who spoke about the last seen theory. We are of the view that this is a case of circumstantial evidence. From the evidence of investigating officer, we can see that statement have been recorded under Section 167 Cr.P.C. from PW4 and PW5 on 05.04.2008. We do not dispute the fact that they reached the Court on 23.08.2008. However, they were merely evaded to answer the reason for such delay. The petitioner has been under incarceration during trial, and till now. Thus, considering the overt act attributed against the petitioner as well as the charges levelled against him, we are of the view that the petitioner is entitled for suspension of sentence as he has been under incarceration for quite number of years.

6. Considering the above, 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, Vellore, Vellore District and on further condition that the petitioner shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-

21/11/2019

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.

TO

1 THE I ADDITIONAL DISTRICT AND
SESSIONS JUDGE, VELLORE,
VELLORE DISTRICT

2 THE CHIEF JUDICIAL MAGISTRATE
VELLORE[FOR INFORMATION]

3 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
K.V.KUPPAM POLICE STATION,
VELLORE DISTRICT,

+1 C.C. to M/S. R.THAMARAI SELVAN Advocate on payment of
necessary charges SR.NO. 23989 सत्यमेव जयते

Order

in
CRL MP.16983/2019

IN CRL.A.NO.629/2019

Date :21/11/2019

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RD 21/11/2019