

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Twenty Seventh day of February Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.17539 OF 2018

IN

CRL.A.NO.418 OF 2017

RAJAN

[PETITIONER]

Vs

STATE, REPRESENTED BY [RESPONDENT]

THE DEPUTY SUPERINTENDENT OF POLICE,

TIRUPPATTUR SUB-DIVISION,

TIRUPPATTUR TALUK POLICE STATION,

VELLORE DISTRICT.

CR. NO. 124 OF 2014.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.418 OF 2017 on the file of the High Court, the High Court will be pleased to suspend the sentence of conviction and imprisonment dated 04.7.2017 imposed by the learned Principal Sessions Judge, Vellore in Spl.S.C.No.23 of 2015 and enlarge the petitioner on bail pending disposal of CRL.A.NO.418 OF 2017 [IN CRL.MP.NO.17539 OF 2018]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.418 OF 2017 on the file of the High Court and upon hearing the arguments of M/S.I.PERIASWAMY, 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.SATHYANARAYANAN, J.]

The petitioner is arrayed as A-1 out of 2 accused in SC.No.23/2015 on the file of the Court of Principal Sessions Judge, Vellore and he along with A-2 were prosecuted for the commission of the offences u/s.341 and 302 IPC and section 3[1][r] of the SC/ST [Prevention of Atrocities] Act, 1989 and the Trial Court, vide impugned judgment dated 04.07.2017, had found A-2 guilty of the offence u/s.341 IPC and imposed him with a sentence of 6 months and acquitted A-1 and A-2 for the commission of the offence u/s.3[1][r]

of SC/ST [Prevention of Atrocities] Act, 1989. The petitioner/appellant/A-1 was also found guilty for the commission of the offences u/s.341 and 302 IPC and was sentenced to undergo rigorous imprisonment for life and to pay a fine of Rs.5000/- with a default sentence of 3 months simple imprisonment for the offence u/s.302 IPC and was also sentenced to undergo 6 months simple imprisonment for the offence u/s.341 IPC. The sentences were ordered to run concurrently. Challenging the legality of the said conviction and sentence passed by the Trial Court, the petitioner/appellant/A-1 has preferred the present appeal and pending appeal, came forward to file the above miscellaneous petition seeking suspension of substantive sentences of imprisonment.

2 The learned counsel for the petitioner/appellant/A-1 has drawn the attention of this Court to Ex.P.1-complaint given by P.W.1 as well as his testimony and would submit that though in the complaint, it is stated that the occurrence took place on the road ; however, in the testimony, P.W.1 had deposed that apprehending assault, P.W.1 hidden himself in a bush and the deceased Arunkumar, went inside the house and he was dragged outside and was done to death in the same place and there is a material contradiction as to the testimony and therefore, the origin and place of occurrence became also highly doubtful. It is the submission of the learned counsel that as per Ex.P.1-Complaint, A-2 was carrying a weapon and subsequently, the deceased was fatally assaulted by A-1 and A-2 was found not guilty for the offence u/s.302 IPC, for which no appeal has been preferred by the State and in the light of the clear inconsistencies and infirmities, his chance of success is bright in this appeal and therefore, prays for suspension of the substantive sentence of imprisonment.

3 *Per contra*, Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the State would submit that though other eyewitnesses had turned hostile, the sole testimony of P.W.1 is found to be believable and trustworthy and it is amply supported by the scientific and other evidences and the Trial Court, on a correct appreciation of the oral and documentary evidences and other materials, had rightly reached the conclusion of guilt and also pointed out that the points urged by the learned counsel for the petitioner can be appreciated only at the time of final disposal of this appeal and prays for dismissal of this petition.

4 This Court has considered the rival submissions and also perused the materials placed before it.

5 The Investigating Officer, apart from recording the statement of P.W.1-defacto complainant u/s.161[3] Cr.P.C., has also recorded P.W.1's statement u/s.164 Cr.P.C. and it appears that P.W.1 had deposed based on his statement given u/s.164 Cr.P.C. Though the learned counsel for the petitioner/appellant/A-1 made a valiant effort to convince the Court as to the discrepancy between Ex.P.1 and testimony given by P.W.1, a perusal of the said material would *prima facie* disclose that the contradictions have not been elicited

from P.W.1 and since the oral testimony of the Investigating Officer has not been filed in the typed set of documents, this Court is unable to find out whether the said contradictions have been put to the Investigating Officer and answers were elicited. At this stage, this Court has to find out whether the testimony of P.W.1 is believable. The fact remains that despite contradictions pointed out by the learned counsel for the petitioner/appellant/A-1, the occurrence took place on the public road and it was witnessed by P.W.1. The scientific and other evidences had also point out that it was the petitioner/appellant/A-1 who had committed the offence. The points urged by the learned counsel for the petitioner/appellant/A-1 as to the vital discrepancies and contradictions, in the considered opinion of the Court, can be considered and appreciated only at the time of advancing arguments in the final hearing and disposal of the appeal and at this stage, it cannot be considered. In the considered opinion of the Court, this is not a fit case to grant the relief as prayed for.

6 In the result, the criminal miscellaneous petition stands **dismissed.**

-sd/-
27/02/2019

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 PRINCIPAL SESSIONS
JUDGE, VELLORE.

2 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE DEPUTY SUPERINTENDENT OF POLICE,
TIRUPPATTUR SUB-DIVISION,
TIRUPPATTUR TALUK POLICE STATION,
VELLORE DISTRICT.

C.C. to M/S.I.PERIASWAMY Advocate on payment of necessary charges

Order

in
CRL MP.17539/2018
in
CRL.A.418/2017

Date :27/02/2019

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MK:05/03/2019