



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Wednesday, the Seventeenth day of July Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice M.SATHYANARAYANAN
and
The Hon`ble Mr Justice B.PUGALENDHI

CRL MP(MD) No.5887 of 2019

IN

CRL A(MD) No.88 of 2019

1 MANIKUMAR
2 RAJARAVI
3 AMITHABACHAN

... APPELLANTS/
ACCUSED NOS.4,5 & 6

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
VIJAYANARAYANAM POLICE STATION,
TIRUNELVELI DISTRICT.
CRIME NO.74/2018

... RESPONDENT/ COMPLAINANT

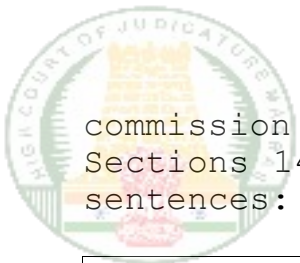
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence of imprisonment imposed on the petitioners in the Judgment dated 19.02.2019 made in S.C.No.467 of 2018 on the file of the IV Additional Sessions Judge, Tirunelveli and enlarge the petitioners on bail pending disposal of the above CrI.A.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.P.ANAND, Advocate for Mr.P.SAMUEL GUNASINGH, Advocate for the petitioner and of Mr.S.CHANDRASEKAR, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

(Order of this Court was made by **M.SATHYANARAYANAN, J**)

The learned Counsel appearing for the petitioners, on instructions, seeks permission of this Court to withdraw this petition so far as A.4 and A.6 are concerned and accordingly, made an endorsement to that effect and therefore, this petition is dismissed as withdrawn insofar as A.4 and A.6 are concerned.

2. The learned Counsel appearing for the petitioner would submit that A.5 in S.C.No.467 of 2018, on the file of the Court of IV Additional Sessions Judge, Tirunelveli, was convicted for the



commission of offences under Sections 379, r/w 109 I.P.C., and Sections 147, 302 r/w 149 I.P.C. and was imposed with the following sentences:

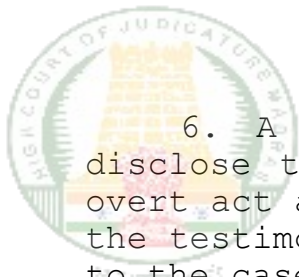
Rank of the Accused	Conviction u/s	Sentence awarded
A.5	147 I.P.C.	To undergo rigorous imprisonment for two years.
	302 r/w 149 I.P.C.	To undergo life imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo rigorous imprisonment for one year.

The sentences of imprisonment were ordered to be run concurrently. Taking into consideration the fact that A.5 has been incarcerated right from 11.05.2018, the trial Court has also granted set-off under Section 428 Cr.P.C. Challenging the legality of the said conviction and sentence, the petitioner/A.5 has preferred the present appeal and pending the appeal, he had filed this petition seeking suspension of the substantive sentences of imprisonment.

3. The primordial submission made by the learned Counsel appearing for the petitioner/A.5 is that the only witness projected by the prosecution as eye-witness speaks about the case of the prosecution is A.5 and even as per his version, he has not been attributed with any specific overt act at the time of commission of offence i.e., on the early morning hours on 07.05.2018, he was sitting on the motorcycle and further pointed out that A.3, who has been attributed with some other overt act, was also acquitted by the trial Court vide the impugned judgment and the investigation officer, who was examined as P.W.25, has conceded that A.5 has not been visited with any antecedents as regards the theft of sand and taking into consideration the fact that admittedly he is in incarceration right from 11.05.2018, prays for suspension of the substantive sentences of imprisonment.

4. Per contra, Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing for the State would submit that P.W.8 has spoken about the alleged extra-judicial confession of A.5 through his mobile phone, since he was also present in the spot and he has convicted with the aid of Section 149 I.P.C., and would further add that A.5 was clamped with the order of detention as "Goonda", which came to be subsequently revoked and the deceased was none other than the police personnel and hence, he strongly opposes the petition for suspension of the substantive sentences of imprisonment.

5. This Court has carefully considered the rival submission and perused the materials placed before this Court.



6. A perusal of the testimony of P.W.2, would *prima facie* disclose that A.5 has not been attributed with any specific vital overt act and he was sitting in the motorcycle and even according to the testimony of P.W.25, he is not having any antecedent with regard to the cases regarding the sand theft offences.

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7. This Court, taking into consideration the above facts and circumstances, is of the view that A.5 is entitled for suspension of the substantive sentences of imprisonment pending the appeal.

8. In the result, the petition is allowed and the substantive sentences of imprisonment alone in respect of the petitioner/A.5 is suspended and the petitioner/A.5 is directed to be enlarged on bail on condition that the petitioner/A.5 shall execute 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 learned Judicial Magistrate, Nanguneri and on further condition that the petitioner/A.5 shall appear before the Committal Court, viz., the Court of Judicial Magistrate, Nanguneri [PRC.No.40/2018] on the first working day of every English Calendar Month at 10.30 a.m. until further orders.

sd/-

17/07/2019

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE IV ADDITIONAL SESSIONS JUDGE, TIRUNELVELI.
2. THE JUDICIAL MAGISTRATE, NANGUNERI.
3. DO-THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.
4. THE SUPERINTENDENT, CENTRAL PRISON, PALAYMKOTTAI.
5. THE INSPECTOR OF POLICE,
VIJAYANARAYANAM POLICE STATION, TIRUNELVELI DISTRICT.
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.P.SAMUEL GUNASINGH Advocate SR.No.11888

ORDER

IN

CRL MP (MD) No.5887 of 2019

IN

CRL A (MD) No.88 of 2019

Date : 17/07/2019

MS/VR/SAR-4/19.07.2019/3P.8C