



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

Wednesday, the Seventeenth day of July Two Thousand Nineteen

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PRESENT

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

CRL MP (MD) No.5984 of 2019
IN
CRL A (MD) No.287 of 2019

AYYAPPAN

... PETITIONER/PETITIONER

Vs

THE STATE REP.BY,
THE DEPUTY SUPERINTENDENT OF POLICE,
WEST POLICE STATION, KUMBAKONAM,
THANJAVUR DISTRICT
(CR.NO.442/2016)

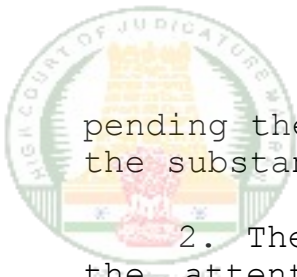
... RESPONDENT/RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed on petitioner by order dated 08/01/2019 passed in Spl.S.C.No.6/2017 on the file of the Learned 1st Additional District and Sessions Judge, Thanjavur pending disposal of the above Crl.A.

Order :This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.B.JAMEEL ARASU, 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 petitioner is A.1 in S.C.No.6 of 2017, on the file of the Court of I Additional Sessions Judge (PCR Court), Thanjavur and vide the impugned judgement dated 28.12.2018, he was convicted for the commission of offence under Section 302 I.P.C., and imposed with the sentence of life imprisonment and to pay a fine of Rs.1000/-, in default to undergo one year rigorous imprisonment and for the commission of offence under Section 323 I.P.C., for the cause of injuries to P.W.2, was imposed with the sentence of one year rigorous imprisonment and to pay a fine of Rs.500/-, in default to undergo one year rigorous imprisonment and challenging the legality of the conviction and sentence, has filed the present appeal and



pending the appeal, he had filed this petition seeking suspension of the substantive sentences of imprisonment.

2. The learned Counsel appearing for the petitioner has drawn the attention of this Court to the order dated 11.06.2019 in CrI.M.P.(MD)No.3615 of 2019 in CrI.A.(MD)No.168 of 2019 and would submit that this Court has granted suspension of substantive sentences of imprisonment to A.2 and further pointed out that the prosecution has cited P.W.2, as injured witness and P.W.3, as eye-witness and admittedly P.W.2 did not speak about the presence of P.W.3 and it appears to be material contradictions and inconsistencies in the testimony of the alleged eye-witness and in the light of the same, the petitioner is having a bright chance of success in this Criminal Appeal and hence, prays for suspension of the substantive sentences of imprisonment.

3. Per contra, Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing for the State would submit that P.W.2 is the injured eye-witness and she had specifically spoken about the over act on the part of A.1 and further pointed out that apart from this case, the petitioner/A.1 is having the following cases:

"(i) Cr.No.374 of 2015, registered by the Natchiyarkovil Police Station, for the commission of offences under Sections 147, 148 and 302 I.P.C., and the charge sheet has also been filed and the case is pending trial;

(ii) Cr.No.137 of 2015, registered by the Thiruvidadaimaruthur Police Station, for the commission of offences under Sections 147, 148, 341, 323, 302, 307, 120 (b) and 109 I.P.C. r/w 3(i) of PPDL Act; and

(iii) Cr.No.159 of 2016, registered by the Thiruneelankudi Police Station, for the commission of offences under Sections 387, 397, 394 I.P.C."

All the cases are pending trial and further pointed out that the motive for the commission of offences is with regard to the earlier murder took place and it is also caste based and therefore it is not safe to let in the petitioner/A.1 also in the light of the antecedents and previous cases and hence prays for dismissal of this petition.

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

5. A *prima facie* consideration and perusal of the testimony of P.W.2 would disclose that she has been attacked by A.1 and sustained simple injuries, for which, he has been convicted under Section 323 I.P.C., and that apart, A.1 is attributed with the vital overt act for having inflicted injury upon the deceased Dhachinamoorthy. The deceased and the eye-witness belong to Scheduled Caste community and A.1 belongs to upper caste community and the motive for the



commission of offence would also disclose that there was previous murders also. In the considered opinion of this Court, the points urged by the learned Counsel appearing for the petitioner, by drawing the attention of this Court to the testimonies of the witnesses can be considered and appreciated only at the time of final disposal and that apart, in the light of the antecedents of the petitioner/A.1 for having involved himself for the commission of offence under Section 302 I.P.C., in two cases, it is not a fit case wherein his plea for suspension of the substantive sentences of imprisonment to be considered.

6. This Criminal Miscellaneous Petition is dismissed.

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 I ADDITIONAL DISTRICT AND SESSIONS JUDGE,
THANJAVUR
2. THE DEPUTY SUPERINTENDENT OF POLICE,
WEST POLICE STATION, KUMBAKONAM,
THANJAVUR DISTRICT
3. THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALUR
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

ORDER
IN
CRL MP (MD) No.5984 of 2019
IN
CRL A (MD) No.287 of 2019
Date :17/07/2019

SSL
PK/JC/SAR-1/23.07.2019 : 3P/5C