



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

Tuesday, the Tenth day of December Two Thousand Nineteen

PRESENT

The Hon`ble Mr.Justice T.RAJA
and

The Hon`ble Mr.Justice B.PUGALENDHI

CRL MP(MD) Nos.7609 & 7610 of 2019

IN

CRL A(MD) No.383 of 2019

VIJAYAKUMAR

... APPELLANT/SINGLE ACCUSED
IN BOTH THE PETITIONS

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
RAJAKKAMANGALAM CIRCLE,
KANNYAKUMARI DISTRICT.
(CRIME NO.72 OF 2014)

... RESPONDENT/ COMPLAINANT
IN BOTH THE PETITIONS

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to Suspend the sentence passed in SC. No.177 of 2014 dated 03.06.2019 on the file of Additional district and Sessions Court (Fast Track), Kanyakumari at Nagercoil enlarge the petitioner / single Accused on bail pending disposal of the above appeal.

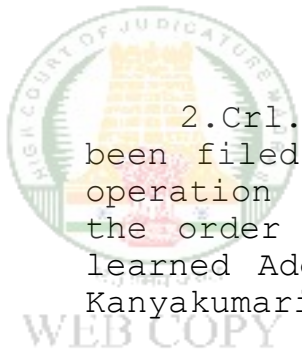
Prayer in CRL MP(MD). 7610/ 2019 :

To Stay the operation of order Para No.73(ii), 73(iii), 73 (iv) and 73 (vii) in SC No.177 of 2014 dated 03.06.2019 on the file of Additional District and Session Court (Fast Track), Kanyakumari at Nagercoil pending disposal of the above appeal.

Order : These petitions coming on for orders upon perusing the petitions filed in support thereof and upon hearing the arguments of MR.N.MOHIDEEN BASHA, Advocate for the petitioner in both the petitions and of MR.K.K.RAMAKRISHNAN, Additional Public Prosecutor in both the petitions on behalf of the Respondents the court made the following order:-

(Order of the Court was made by T.RAJA. J.)

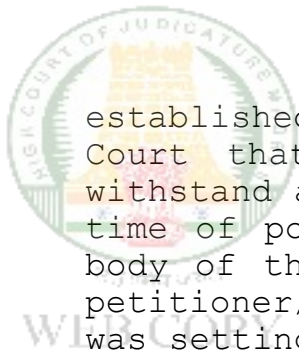
Crl.M.P.(MD)No.7609 of 2019 in Crl.A.(MD)No.383 of 2019 has been filed by the petitioner/appellant/accused seeking to suspend the sentence passed in S.C.No.177 of 2014, dated 03.06.2019, by the learned Additional District and Sessions Judge (Fast Track Court), Kanyakumari District @ Nagercoil.



2.Crl.M.P.(MD)No.7610 of 2019 in Crl.A.(MD)No.383 of 2019 has been filed by the petitioner/appellant/accused seeking to stay the operation of Paragraph No.73(ii), 73(iii), 73(iv) and 73 (vii) of the order dated 03.06.2019, passed in S.C.No.177 of 2014, by the learned Additional District and Sessions Judge (Fast Track Court), Kanyakumari District @ Nagercoil.

3.Learned counsel appearing for the petitioner/appellant argued that the prosecution case put up against the petitioner/appellant shows that the petitioner/appellant, who is hailing from Suchindrum, is the younger son of the deceased viz., Ponnaiah, who retired from service as Conductor from the Tamil Nadu State Transport Corporation. There are some properties owned by the deceased. The petitioner/appellant often used to demand his share of the property, which was refused by his father deceased Ponnaiah, who is having three daughters and two sons. On 19.03.2014, about 11.00 p.m., while the said Ponnaiah was talking with his brother's son Murugesan, the petitioner/appellant came there and set fire to the clothes of Sukumari, who is his sister. Looking at the burning clothes of Sukumari, the deceased questioned the petitioner/appellant. Consequently, there was a wordy quarrel arose between them. The further case of the prosecution is that the petitioner/appellant pushed his father/deceased inside the burning flames of the dress materials and thereafter, the father of the petitioner/appellant was rushed to M.L. Hospital at Nagercoil on 20.03.2014. But, he succumbed to the burn injuries on 30.03.2014 about 08.15 p.m. Although P.W.1 categorically spoke that he was not aware of the dispute between the petitioner/appellant and his father pertaining to the property, the brother of the deceased, who only supporting the case of the prosecution, implicated the petitioner/appellant. Believing the case of the prosecution and overlooking the medical evidence available that the body of the deceased was having almost 500 ml. of Alcohol and disbelieving the defence case, the Trial Court convicted the petitioner/appellant under Section 302 of I.P.C. and sentenced him to undergo life imprisonment with a fine of Rs.10,000/-, in default, to undergo further period of one year simple imprisonment; convicted him under Section 448 of I.P.C. and sentenced him to undergo for a period of one year rigorous imprisonment with a fine of Rs.1,000/-, in default, to undergo further period of one month simple imprisonment; and also convicted him under Section 435 of I.P.C. and sentenced him to undergo seven years rigorous imprisonment with a fine of Rs.5,000/-, in default, to undergo further period of six months simple imprisonment. This apart, the Trial Court also invoking Section 456 of Cr.P.C. dispossessed the petitioner/appellant from possessing and enjoying the property.

4.Adding further, the learned counsel appearing for the petitioner/appellant argued that the Trial Court has also ordered the petitioner/appellant to undergo solitary confinement i.e., five days in a cell for three months. When the petitioner/appellant has



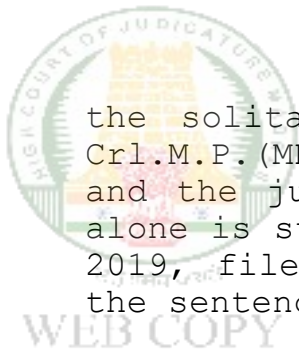
established his case with best evidence available before the Trial Court that the deceased having drunken beyond his capacity to withstand and that could be seen from the medical report that at the time of post-mortem, almost 500 ml. of Alcohol was present in the body of the deceased and also brought to the Trial Court that the petitioner/appellant, noticing the conduct of the deceased that he was setting fire to the clothes belonging to his sister Sukumari and attempted to stop the deceased from getting into the fire, this defence was completely overlooked by the Trial Court. Therefore, the matter requires deep examination by this Court, till then, the sentence imposed against the petitioner/appellant requires to be suspended.

5.Learned Additional Public Prosecutor appearing for the respondent pleaded that whether invocation of power under Section 456 of Cr.P.C. by the Trial Court to keep the petitioner/appellant away from possessing and enjoying the property is right or not could be considered only when the matter is taken up for final hearing. But, the case of the prosecution was clearly established that it was only the petitioner/appellant was responsible for killing of his own father by pushing him inside the fire set by him.

6.Adding further, the learned Additional Public Prosecutor pleaded that often the petitioner/appellant used to pickup quarrel with the deceased demanding partition of the property, as the deceased father was taking care of two daughters viz., Sukumari as well as Vasanthi, who is a mentally retarded person. Due to frequent quarrel caused by the petitioner/appellant, the said Sukumari, one of his elder sister has committed suicide, against which, a case has been registered against the petitioner/appellant and the same is pending. This apart, the contentions made by the learned counsel appearing for the petitioner/appellant that the Trial Court has wrongly accepted the case of the prosecution cannot be looked into for the simple reason that when the deceased father of the petitioner/appellant has given dying declaration, clearly indicating that the petitioner/appellant is only responsible for the cause of the death of the deceased and accordingly, prayed for dismissal of both the applications.

7.We have heard the learned counsel appearing for the parties and perused the materials available on record.

8.On a perusal of the dying declaration, we are of the view that the matter needs to be considered elaborately while hearing the appeal. Hence, we are not inclined to accept the request of the learned counsel appearing for the petitioner/appellant to suspend the sentence imposed on the petitioner/appellant. However, taking note of the fact that the Trial Court has ordered the jail authorities to keep the petitioner/appellant/accused in solitary confinement for five days in a month for a period of three months



the solitary confinement until further orders. To that extent, Crl.M.P.(MD)No.7610 of 2019 in Crl.A.(MD)No.383 of 2019 is ordered and the judgment of the Trial Court ordering solitary confinement alone is stayed. Crl.M.P.(MD)No.7609 of 2019 in Crl.A.(MD)No.383 of 2019, filed by the petitioner/appellant/accused seeking to suspend the sentence, is dismissed.

sd/-
10/12/2019

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

TO

- 1 THE ADDITIONAL DISTRICT
AND SESSION JUDGE
(FAST - TRACK),
KANYAKUMARI AT NAGERCOIL.
- 2 THE INSPECTOR OF POLICE,
RAJAKKAMANGALAM CIRCLE,
KANNYAKUMARI DISTRICT.
- 3 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.N.MOHIDEEN BASHA, Advocate (SR-21587[I] dated
10/12/2019)

ORDER
IN
CRL MP(MD) Nos.7609 &
7610 of 2019
IN
CRL A(MD) No.383 of 2019
Date :10/12/2019

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JM/VR/SAR 2/08.01.2020/4P/6C