



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

Wednesday, the Eighteenth 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) No.9125 of 2019

IN

CRL A(MD) No.495 of 2019

1 MANOHARAN
2 VAIRAVAN
3 VAIRAMUTHU

... PETITIONERS/PETITIONERS

Vs

STATE REP BY
THE INSPECTOR OF POLICE
ODAIPATTI POLICE STATION,
THENI DISTRICT.
CRIME NO.59 OF 2015

... RESPONDENT/RESPONDENT

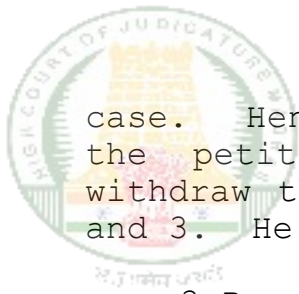
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed by the Addl.Dist Court(Fast Track), Theni in SC No.135 of 2016 dated 13.09.2019 against the appellants and enlarge the petitioners on bail.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of MR.M.AJMAL KHAN Senior Counsel for M/S. AJMAL ASSOCIATES, Advocate for the petitioner and of MR.R.ANANDHARAJ, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

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

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in S.C.No.135/2016, dated 13.09.2019 by the learned Additional District Court (Fast Track), Theni.

2.When the matter is taken up for hearing, we expressed our opinion against the petitioners 2 and 3/accused 2 and 3 in this
<https://hcservices.ecourts.gov.in/hcservices/>



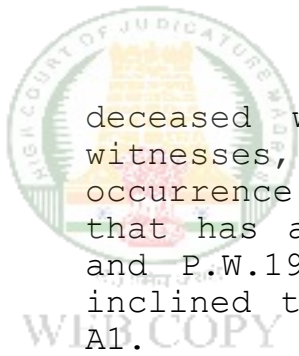
case. Hence, Mr.Ajmal Khan, learned Senior Counsel appearing for the petitioners/appellants seeks permission of this Court to withdraw this petition in respect of petitioners 2 and 3/accused 2 and 3. He has also made an endorsement to that effect.

3.Permission is granted. The learned Senior Counsel further submitted that he may be given liberty to renew the present application after some time in respect of A-2 and A-3.

4.The learned Senior Counsel appearing for the petitioners/appellants submitted that there was a contradiction between the evidence of P.W.1 and P.W.8 on the one side and P.W.19 on the other side. It clearly shows that it is not safe to sustain the conviction of all the accused, the reason being that based on the evidence produced by the prosecution, there is no any safe evidence to support the overt act of A-1. P.W.1 is wife of the deceased, Chinnaiah. In her evidence, she deposed that only one vital injury was caused to the deceased that led to his death. But the medical evidence clearly shows that there are multiple injuries found on the body of the deceased. This apart, A-1 also sustained head injuries, but this has not been explained by the prosecution at any point of time. This shows that the prosecution has suppressed the injuries sustained by the accused and therefore, it is to be inferred that the prosecution did not come forward with the true version of the occurrence and projected the true version as only partly. Even the mother of the deceased P.W.8 deposed that it was only at 7.00 a.m, when the deceased was proceeding to answer the nature's call, the incident took place. Her evidence has also been disproved by yet another eye witness P.W.15. Even the arrest and recovery being fairly contradicted by P.W.19 also liable to go, in the light of the contradictions established by the defence' side claim made between P.W.9 and P.W.15.

4.On the other hand, learned Additional Public Prosecutor appearing for the respondent submitted that there is no question of concealing or covering up the injury said to have been sustained by A-1, when the prosecution was able to establish that the deceased sustained injuries through the accused. It was at that time after hearing the cry made by the accused, the family members of the deceased chased the accused. In the process, A-1 escaped and fell down and sustained some injuries. Had it been a major injury, it would have been shown in the remand order. As there is no such injury recorded in the remand order by the learned Judicial Magistrate, the emphatic argument advanced by the learned counsel for the petitioner/appellant/accused No.1 that the prosecution has suppressed the injuries of the accused is liable to be repelled.

5.We also find some merits in the arguments advanced by the learned Additional Public Prosecutor that the deceased was called by A-1, A-2 and A-3. After hearing the out-cry raised by the accused, the deceased, mother of the deceased and brothers of the



deceased went to rescue the deceased. After seeing the eye witnesses, A-1, A-2 and A-3 tried to escape from the scene of occurrence. In that process only, A-1 sustained some injuries and that has also been explained by the Investigation Officers, P.W.7 and P.W.19 also. Therefore, for all these reasons, we are not inclined to entertain the request for suspending the sentence for A1.

6. Accordingly, this criminal miscellaneous petition fails and the same is dismissed in respect of petitioner No.1/A-1. Further, this petition is dismissed as withdrawn in respect of petitioners 2 and 3/accused 2 and 3. However, we grant liberty to the learned Senior Counsel appearing for the petitioner to renew this application in favour of A-2 and A-3 after some time.

sd/-
18/12/2019

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/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1. THE JUDGE,
ADDITIONAL DISTRICT COURT (FAST TRACK), THENI.
- 2 THE INSPECTOR OF POLICE
ODAIPATTI POLICE STATION,
THENI DISTRICT.
3. THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
4. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-22217[I] dated 19/12/2019)

ORDER
IN
CRL MP (MD) No.9125 of 2019
IN
CRL A (MD) No.495 of 2019
Date : 18/12/2019

vs

AE/JC/SAR-II (18.02.2020) 3P 6C