

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2020

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MS.JUSTICE V.M.VELUMANI

Crl. M.P. No. 4273 of 2020
in
Crl. A. No. 483 of 2020

K. Shanmugam , M/A. 31 years,
S/o. Kuppan,
No. 215, TVK Street,
T.V. Nagar,
Thirumangalam,
Chennai 600 040.
(Now confined in the Central
Prison -1, Puzhal, Chennai) .. Petitioner / Appellant/ Accused-1

Vs.

State by: The Inspector of Police (L & O),
BV-5, Thirumangalam Police Station,
Chennai 600 101.
(Crime No. 97/2008) .. Respondent/ Respondent/Complainant

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of Criminal Procedure Code praying to suspend the sentence imposed against the petitioner on 25.07.2019 in S.C. No. 5 of 2011 on the file of the II Additional Sessions Court, Chennai and release the petitioner on bail till the disposal of the Criminal Appeal in Crl. A. No. 483 of 2019.

For Petitioner : Mr. P. Pugalenth
For Respondents : Mrs. M. Prabhavathi,
Additional Public Prosecutor

ORDER

(Order of the Court was made by N.KIRUBAKARAN,J.)

The matter is heard through "Video Conferencing".

2. The appeal has been filed by the first accused against the judgment of the Trial Court by which the petitioner and other accused were convicted for life on 25.07.2019 in S.C. No. 5 of 2011. The present miscellaneous petition has been filed to suspend the sentence imposed on him.

3. The case of the prosecution is that one Karthik who is the friend of the accused was said to be having illegal relationship with the wife of the petitioner herein/A1 and 4th accused. After knowing the illegal intimacy, the accused conspired to do away with the life of the Karthik. Accordingly, when the deceased was distributing his marriage invitation, the accused and others joined together and attacked the deceased with knife due to which the said Karthik died. Therefore, a case has been registered. On appreciation of

evidence, the Trial Court convicted the petitioner and others.

4. Mr. P. Pugalenth, learned counsel appearing on behalf of the petitioner would submit that the petitioner's name has not been mentioned in the FIR. Even the AR copy would state that only an unknown person has attacked the deceased. In the absence of any statement at the earliest point of time, viz., in the FIR as well as the AR copy, the petitioner has been wrongly convicted by the Trial Court and therefore, he seeks for suspension of sentence.

5. However, Mrs.M.Prabhavathi, learned Additional Public Prosecutor, appearing on behalf of the respondents would submit that the petitioner alone attacked the deceased along with others and that has been categorically stated by the eye-witnesses viz., P.W.1 and P.W.7. Merely because the name of the accused is not mentioned in the FIR, it would not absolve him from criminality.

6. Heard the parties and perused the materials available on record.

7. A perusal of the records, especially the evidence of P.W.1 and P.W.7/eye witnesses would categorically state that the petitioner K.Shanmugam attacked the deceased on the head. The relevant evidence is reads as follws:

“எங்க அண்ணன் கார்த்திய, சண்முகம் கத்தியால
தலைல வெட்னான்”

When there is an eye-witness to prove that the petitioner attacked the deceased with knife which resulted the murder of the deceased person, it is not a case for suspending the sentence.

Accordingly, the petition is dismissed.

(N.K.K., J.) (V.M.V., J.)

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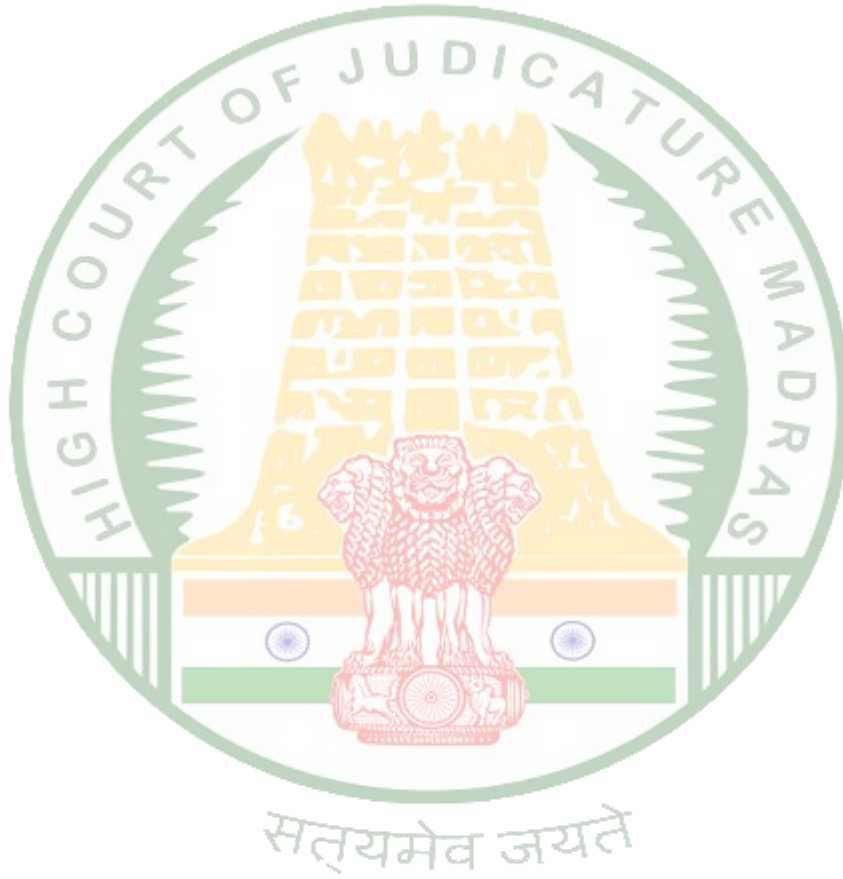
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To

1.The Inspector of Police (L & O),
The State of Tamil Nadu,
BV-5, Thirumangalam Police Station,
Chennai 600 101.

2.The Judge,
II Additional Sessions Court,
Chennai.

3.The Additional Public Prosecutor,
Madras High Court, Chennai.

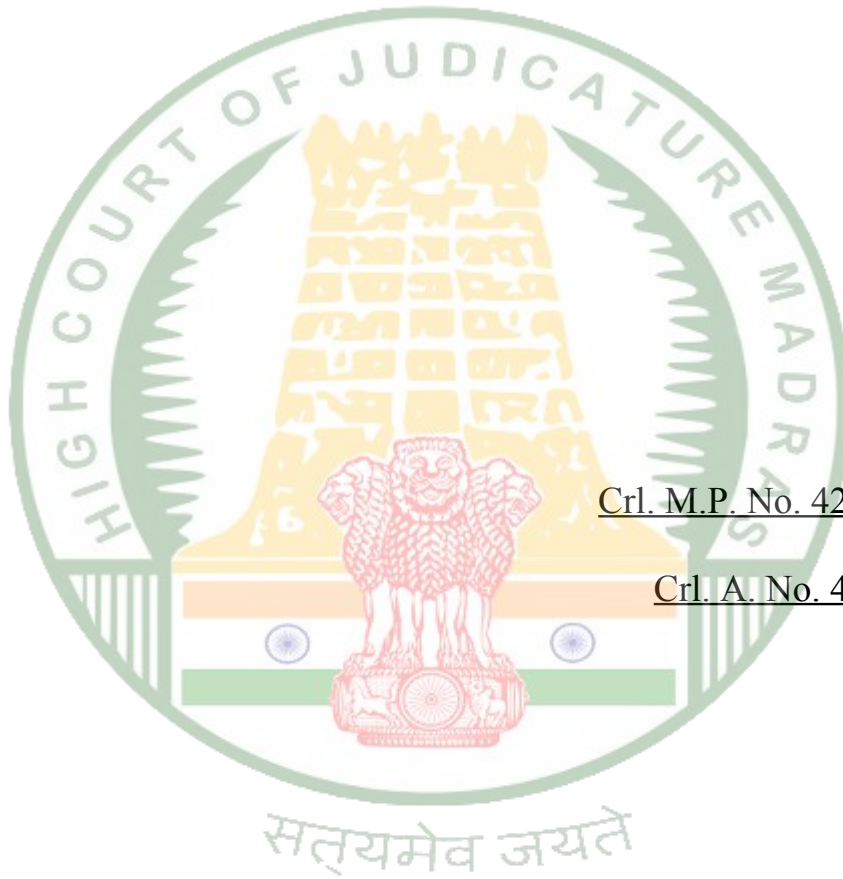


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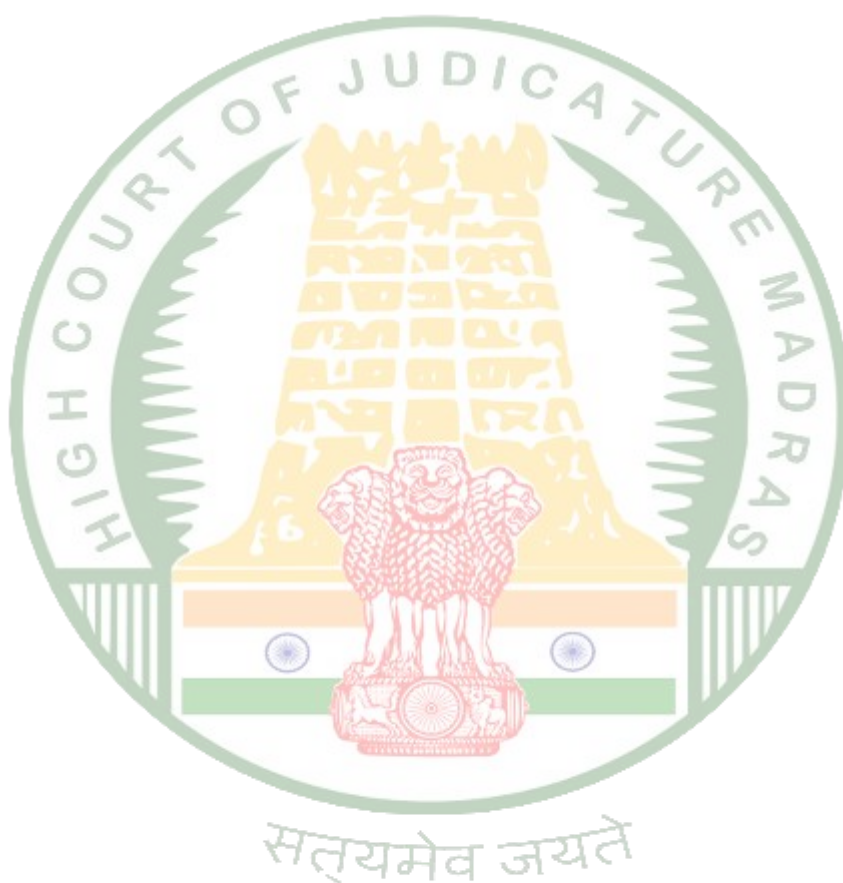
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