

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.M.P.No.6032 of 2020

in CRL.A.No.393 of 2020

1.Kandasamy
2.Kaliyan
3.Rathinam
4.Arumugam
5.Ayyappan
6.Ramalingam

... Petitioners

/versus/

1. The State, rep by
The Deputy Superintendent of Police,
Ulundurpet Police Sub Division,
Villupuram District.
(Elavasaur Kottai Police Station Crime No.367/2017)

.... Respondents

2.Nadesan

PRAYER: Criminal Miscellaneous Petition filed under Section 389 of Criminal Procedure Code, to suspend the sentence awarded in S.C.No.51 of 2018 by the Special Court for SC/ST (PoA) Act, Villupuram vide judgment dated 13.03.2020 till disposal of the appeal.

For Petitioners : Mr.S.Ramajayam

For Respondents : Mr.C.Raghavan
Government Advocate [Crl. Side]

ORDER

The petitioners herein are accused in S.C.No.51 of 2018, on the file of the Special Court for SC/ST (PoA) Act, Villupuram, was convicted by the judgment dated 13.03.2020 for the offence under Sections 147, 148, 427, 447, 352, 506(ii) IPC r/w 3(1) (r)&(s), 3 (2)(va) SC/ST (POA) Act and for offence under Section 147 IPC, A1 to A6 are sentenced to undergo Rigorous Imprisonment for a period of two years. For offence under Section 148 IPC, A1 to A6 are sentenced to undergo Rigorous Imprisonment for a period of two years. For offence under Section 447 IPC, A1 to A6 are sentenced to undergo Rigorous Imprisonment for a period of three months. For

offence under Section 427 IPC, A1 to A6 are sentenced to undergo Rigorous Imprisonment for a period of two years. For offence under Section 506(ii) IPC, A5 and A6 are sentenced to undergo Rigorous Imprisonment for a period of two years. For offence under Section 352 IPC, A1 and A6 are sentenced to undergo Rigorous Imprisonment for a period of three months. For offence under Section 3(2) (va) of the SC/ST (PoA) Act, 2015, A1 to A6 are sentenced to undergo Rigorous Imprisonment for a period of two years and to pay a fine of Rs.1,000/- each in default to undergo Simple Imprisonment for a period of three months. All the accused to pay a sum of Rs.10,000/- each as compensation to the victim. Aggrieved over the same, the present Criminal Appeal filed along with a petition for suspension of sentence.

2. The gist of the case is that on 13.08.2017, at about 9.00 a.m., the petitioners herein formed into an unlawful assembly, trespassed with knives into 1 Acer land belongs to the Second respondent/defacto complainant/P.W.1 and caused damage to the sugarcane crops worth about Rs.6,000/- planted by him. When P.W.2 and P.W.3/Wife and daughter of P.W.1 tried to intervene and stop the petitioners, the petitioners abused P.W.2 and P.W.3 in a filthy language and assaulted them. When the second respondent questioned about the same, the petitioners threatened the second respondent by showing knife and carried away the sugarcane in two lorries. Hence, the second respondent/defacto complainant preferred a complaint to the first respondent Police and the same has been registered in Crime No.367 of 2017.

3. The contention of the learned counsel for the petitioners is that the petitioners have been falsely implicated in this case. P.W.5/Village Administrative Officer in his evidence has deposed that 5 cents of land belong to Ellai Muniappan Swamy Temple was damaged and not 1 Acer of land belongs to the victim. Neither the knives nor the vehicle used for alleged commission of offence had been produced before the Court below to prove the alleged offence. The fact of cutting the sugarcane planted by P.W.1 has not been proved or even corroborated by the independent witness. P.W.1 to P.W.4 are interested witness and all are from the same family. The prosecution had failed to prove the plantation of Sugarcane by examining the Sugarcane Inspector or the Bank account hold by P.W.1 as he had planted the sugarcane in the disputed land. The prosecution neither cited the workers, who cut the sugarcane as accused or witness. P.W.3 in her evidence deposed P.W.1 and his two brothers are jointly cultivating their family lands and none of the other owners of the alleged damaged sugarcane crop were examined. Therefore, the petitioners trespassed for commission of offence is not attracted and prayed for granting bail to the petitioners.

4. The learned Government Advocate submitted that due to previous enmity the petitioners trespassed into the land belongs to the second respondent and caused damage to the sugarcane crops worth about Rs.6,000/-, abused P.W.2 and P.W.3, who tried to restrain them by using filthy language and threatened P.W.1 by

showing knife. Hence complainant came to be lodged against the petitioners in Crime No.367 of 2017. P.W.9/Investigation Officer visited the scene of occurrence and prepared observation mahazar and rough sketch/Ex.P6. During trial, P.W.1 to P.W.10 were examined as witnesses and Ex.P1 to Ex.P7 were marked on the prosecution side. On the defence side, no witnesses were examined and no document was marked. The Trial Court on considering the evidence and materials has rightly convicted the petitioners and opposed for granting bail to the petitioners.

5. Considering the submission and perusal of the materials, it is seen that there was a previous enmity between the petitioners and the second respondent. P.W.1 to P.W.4 are the witnesses belongs to the same family. Other than the official witnesses no independent witnesses were examined and no weapons were seized and produced before the Court below to prove the commission of offence. Further, in view of the fact that there are several infirmities in the prosecution case and there are arguable points involved in the appeal, as contended by learned counsel for petitioners and further, the appeal is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

6. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioners are directed to be enlarged on bail on condition that the petitioners shall execute a bond for a sum of Rs.10,000/- (rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the Special Court for SC/ST Cases, Villupuram, within a period of 15 days from the date of receipt of a copy of this order and on further condition that the petitioners shall appear before the said Court on the first working day of English Calendar Month once in three month at 10.30 a.m. till the disposal of the appeal.

-sd/-

30/11/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SPECIAL COURT FOR
SC/ST CASES, VILLUPURAM.

2 THE DEPUTY SUPERINTENDENT OF POLICE,
ULUNDURPET POLICE SUB-DIVISION,
VILLUPURAM DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1 C.C. to M/S. S.RAMAJAYAM Advocate on payment of necessary
charges SR.NO.7815

Order

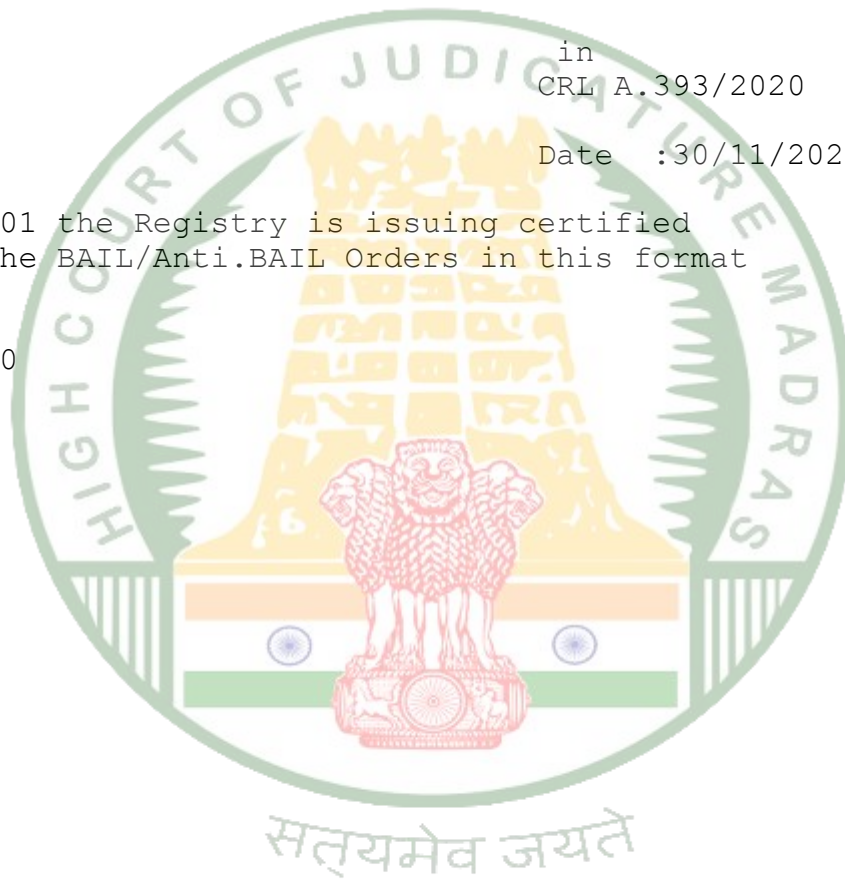
in
CRL MP.6032/2020

in
CRL A.393/2020

Date :30/11/2020

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