

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

and

The Hon'ble Mr. Justice D.KRISHNAKUMAR

CRL MP No. 6203 of 2020

in Crl.A No. 404 of 2020

1.Kanthan @ Kannadasan Petitioners
2.Muniyappan
3.Parimala

vs

The State Rep. By Respondent
The Inspector of Police,
Chetpet Police Station,
Chetpet,
Thiruvannamalai District.

Petition filed under Section 389(1) of Cr.P.C to suspend the sentence passed by the Principal District and Sessions Court, Tiruvannamalai, dated 02.07.2020 made in S.C.No.25 of 2015 pending disposal of the appeal.

For Petitioners... Mr.B.Jawahar

For Respondent .. Mr.K.Prabhakar,
Addl. Public Prosecutor

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioners/A1 to A3 are children of A4 and A5 in S.C.No. 25 of 2015 on the file of Principal District and Sessions Court, Tiruvannamalai. A4 died pending trial while acquitting A4 and A6 were acquitted. The trial Court by judgment dated 02.07.2020 convicted the petitioners/A1 to A3 for the offence punishable under Sections 148 and 302 IPC. For the offence punishable under Section 148 IPC the trial Court sentenced them to undergo rigorous imprisonment for two years

and to pay a fine of Rs.1000/- each, in default, one month simple imprisonment and for the offence punishable under Section 302 IPC sentenced them to undergo imprisonment for life and to pay a Rs.5000/- each, in default, to undergo six months simple imprisonment. Seeking suspension of sentence imposed, the present petition has been filed.

2. The case of the prosecution is that on 04.03.2012, the petitioners along with A4 to A6 formed an illegal assembly and attacked the deceased and other witnesses. Accordingly, a case has been registered in Cr.No.372 of 2012 under Sections 147,148, 294(b), 323, 324, 341, 307 and 302 IPC. Upon trial, the petitioners were convicted while A5 and A6 were acquitted. The overt act against the petitioners is that the petitioners attacked the witness by name Sathish on the knee and the third petitioner attacked the witness, namely P.W.3 on the head. Incidentally, the third petitioner is also stated to have attacked another witness on the head.

3. Learned counsel appearing for the petitioners submitted that it is a case of case in counter. From the evidence of the Investigation Officer, it is clear that the first petitioner was admitted in the hospital. He suffered injuries including fracture. The injuries were found on the head and the forearm. What is applicable to the other accused who were acquitted will have to be applied to the case of the petitioners as well. Thus the very case of the prosecution itself is not true. Therefore, the suspension of sentence will have to be granted.

4. Learned Additional Public Prosecutor appearing for the State submitted that the injuries suffered by the first petitioner have been dealt with by the trial Court. The trial Court considered the evidence rendered by the eye witnesses, who are also injured witnesses, while rendering conviction. Thus, the petition deserves to be dismissed.

5. Admittedly, the first petitioner was injured. P.W.20, who is the Investigation Officer has clearly stated that the first petitioner suffered injuries and was taking treatment at the Polur Government Hospital. For the reasons known to him, the Doctor, who treated the first petitioner being a Government Doctor was not examined. The records were not perused and no investigation was done on that score. We have also seen the specific overt act against the petitioners. It lends credence to the case as projected by the learned counsel for the petitioners that it may a group clash. Thus, we do find that there are several issues to be decided in the appeal especially when we look at the nature of injuries and the specific overt act against the petitioners coupled with the material objects which are

used for the offence committed. We may also note that the other accused namely, A5 and A6 though implicated by the prosecution were acquitted based upon the same facts. Thus, considering the above, we are inclined to suspend the sentence.

6. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that each of the petitioners executes a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of Judicial Magistrate, Polur and on further condition that the petitioners shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-
07/12/2020

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 JUDICIAL MAGISTRATE,
POLUR.

2 THE CHIEF JUDICIAL MAGISTRATE
TIRUVANNAMALAI [FOR INFORMATION].

3 THE PRINCIPAL DISTRICT AND
SESSIONS COURT, TIRUVANNAMALAI.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
CHETPET POLICE STATION, CHETPET,
TIRUVANNAMALAI DISTRICT.

6 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE.

7 THE SUPERINTENDENT,
CENTRAL PRISON FOR WOMEN, VELLORE.

+1 C.C. to M/S.B.JAWAHAR Advocate on payment of necessary charges
SR.NO. 7962

Order

in
CRL MP.6203/2020

in
CRL A.404/2020

Date :07/12/2020

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