

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.6379 of 2020
in C.A.No.417 of 2020

1.Venkatachalam
2.Balaji
3.Thirumalai

... Petitioners

Versus

The State

Rep. by the Inspector of Police,
Kaveripattinam Police Station,
Kaveripattinam,
Krishnagiri District.
(Crime No.245 of 2015)

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389 (1) of the Code of Criminal Procedure, to suspend the sentence passed by the learned Additional Sessions Judge, Krishnagiri, Krishnagiri District in Sessions Case No.251 of 2016 dated 08.10.2020 against the petitioners and enlarge the petitioners on bail pending disposal of the Criminal Appeal.

For Petitioners : Mr.V.Rajamohan

For Respondent : Mr.C.Iyyappa Raj
Additional Public Prosecutor

ORDER

Petitioners were convicted for offence under Sections 148, 341, 342, 323, 506(ii) of I.P.C and 3(1) of Tamil Nadu Property Prevention of Damage and Loss Act, 1992. For the offence under Section 148 of I.P.C, the petitioners are imposed with a fine of Rs.500/- in default of payment of fine amount to undergo one year S.I. For the offence under Section 341 of I.P.C, the petitioners are imposed with a fine of Rs.500/- in default of payment of fine amount to undergo one year S.I. For the offence under Section 342 of I.P.C, the petitioners are imposed with a fine of Rs.500/- in default of payment of fine amount to undergo one year S.I. For the offence under Section 323 of I.P.C, the petitioners are imposed with a fine of Rs.1000/- in default of payment of fine amount to undergo one year S.I. For the Offence under Section 506 (1) of I.P.C the petitioners are sentenced to undergo one year

R.I with a fine of Rs.500/- in default of payment of fine amount to undergo three months S.I. For the offence under Section 3(1) of Tamil Nadu Property Prevention of Damage and Loss Act, 1992, the petitioners are sentenced to undergo one year R.I with a fine of Rs.500/- in default of payment of fine amount to undergo one month S.I by the learned Additional Sessions Judge , Krishnagiri under judgment dated 08.10.2020 in S.C.No.251 of 2016. Hence, the petitioners seeks suspension of sentence.

2. The case of the prosecution is that on 31.03.2015 at about 5.30 p.m., the accused A1 to A14 formed unlawful assembly armed with deadly weapon with a view to attack the complainant Govindasamy/P.W.1, due to previous enmity between them in respect of 2 ½ cents land situated in front of the house of Govindasamy. The accused planned to damage the house of Govindasamy and as such A1 to A14 came with a JCB bearing No. TN 10 AJ 4846, caused damage by digging the floor in front of the complainant's house. When the complainant Govindasamy tried to restrain the above illegal act of the accused, all the accused wrongfully restrained Govindasamy/P.W.1 confined him by pushing into the house and tied him in a iron post with a blue colour nylon rope, abused him in a filthy language and assaulted him with hands and legs, A5/Paneerselvam assaulted the complainant with a wooden log on his right elbow, A4/Chinnasamy assaulted him with a wooden log on his hip and right side of the head. Due to which, the complainant sustained injuries. The accused also damaged the entrance and asbestos sheet ceiling of the house of the complainant Govindasamy and caused damages to the property to the tune of Rs.3,500/- and finally all the accused A1 to A14 intimidated the witnesses. Hence, the Inspector of Police, Kaveripattinam, filed a charge sheet against the accused A1, A2, A3 u/s. 147, 148, 294(b), 341, 342, 323, 506(ii) of IPC and Section 3(1) TNPPDL Act 1992 and against A4, A5 u/s. 147, 148, 294(b), 341, 342, 324, 506(i) of IPC and Section 3(1) TNPPDL Act 1992 and against A6 to A14 u/s. 147, 148, 294(b), 341, 342, 323, 506(i) of IPC and Section 3(1) TNPPDL Act 1992.

3. During the trial P.W.1 to P.W.13 were examined as Prosecution side witnesses, Ex.P1 to Ex.P12 and M.O.1 and M.O.2 were marked. On the defence side D.W.1 was examined and Ex. D1 to Ex.D3 were marked.

4. The learned counsel for the petitioner submitted that P.W.1 to P.W.3 are from the same family. P.W.1 is the father of P.W.2 and husband of P.W.3, P.W.5 is the person known to P.W.1. The other witness P.W.4, P.W.6 and P.W.7 have not supported the case of prosecution. The witness to the Seizure Mahazar have not supported this case. Further, F.I.R came to be lodged with a delay of 22 hours and no reason for the delay is given. The evidence of P.W.5 and P.W.6 is in the nature of hearsay. Further, P.W.11 is the Sub-Inspector of Police, on information from the Primary Health Centre, Kaveripattinam P.W.11 arrived, enquired P.W.1, who was taking treatment there and registered the case. P.W.10/Doctor, states that P.W.1 was in a state of shock

and not in a position to talk. In such circumstances, the details found in the complaint is highly doubtful.

5. The learned counsel for the petitioner further submitted that the specific case of the prosecution is that, a pit was dug in front of the house of P.W.1 with JCB and no public persons were examined as witness to state about the occurrence. Further, for the other overtact that asbestos sheet valid around Rs.15,000/- which was available in the place of occurrence was damaged and hence a case under Section PPDL Act came to be registered. In this case, no piece of asbestos marked as material object. The mahazar witness to the scene of occurrence have not supported the case of the prosecution. The Trial Court placing reliance on evidence of P.W.9, who is working in Sriram Traders, from where asbestos was purchased through Ex.P3 cannot be acted upon. Due to the previous enmity, all the persons have been made as accused. There is a Civil Suit pending against P.W.1 and A1 in O.S.No.75 of 2015 before the District Munsif Court, Krishnagiri and the same is marked Ex.D1, the order and decree in I.A.No.389 of 2015 are marked as Ex.D2 and Ex.D3, which were not considered by the Trial Court. Further, he submitted that the petitioners paid the fine amount and the sentence is suspended till 05.11.2020.

6. The learned Additional Public Prosecutor submitted that there are totally 15 accused in this case. P.W.1 to P.W.5 are the eye witnesses, P.W.1 to P.W.3 belong to same family. P.W.4 has not supported the case of the prosecution. In this case, P.W.1 to P.W.13 were examined as witness and Ex. P1 to Ex.P12, M.O.1 and M.O.2 were marked on the side of the prosecution. On the side of the defence, D.W.1 was examined and Ex.D1 to Ex.D3 were marked. There is some land dispute between P.W1 and A1. Therefore, A1 joined with other accused and assaulted P.W.1. A15 is the driver of the JCB who dug pit in front of the house of P.W.1, A4 and A5 assaulted the P.W.1 with wooden log. Thereafter, P.W.1 was tied to an iron post with nylon rope. Due to the assault, P.W.1 sustained injury and he was taken to the Primary Health Centre, Kaveripattinam. P.W.10/Doctor, clearly states about P.W.1 was in a state of shock and shivering due to the assault and referred to the Government Hospital, Krishnagiri. Thereafter, Police visited the Hospital recorded the statement of P.W.1 and the case came to be registered. The Trial Court after considering the evidence and materials had rightly convicted the petitioners. He further submitted that the defence taken by the petitioners that Civil Proceedings are pending before the District Munsif Court, Krishnagiri, clearly proves that motive existed for the accused to assault P.W.1.

7. Considering the rival submissions and perusal of the materials, it is seen that there is some civil dispute between P.W.1 and A1. In this case, A15 is the JCB driver, who was engaged to dig a pit in front of the house of P.W.1. A4 and A5 tied P.W.1 in the iron post and beat him with wooden log. Later, P.W.1 was admitted in Hospital and took treatment. As far as these petitioners are concerned, there is no specific overt act against them and nothing to show that they acted with the other accused, formed an unlawful assembly and assaulted P.W.1. P.W.4 is one of the eye who has not supported the prosecution. The damage for asbestos to the value of Rs.15,000/- has been stated, but no piece of asbestos has been seized from the scene of occurrence. P.W.9 who is working in Sriram Traders, from whom P.W.1 purchased the asbestos was examined by that it cannot be held conclusively that it was same asbestos sheet, damaged further nothing was seized from scene of occurrence. The witness to the Mahazar have not supported the case of prosecution and further Civil Proceedings is pending between P.W.1 and A1. Hence, in all, this Court finds that there are arguable points involved in the appeal, as 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 petitioners herein are entitled to the relief of grant of suspension of sentence.

8. 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 learned Judicial Magistrate No.1, Krishnagiri within a period of 15 days from the date of receipt of a copy of this order and on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m. till the disposal of the appeal.

-sd/-
16/10/2020

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 NO.I,
KRISHNAGIRI.

2 THE CHIEF JUDICIAL MAGISTRATE
KRISHNAGIRI [FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
KAVERIPATTINAM POLICE STATION,
KAVERIPATTINAM,
KRISHNAGIRI DISTRICT.

+1C.C. to M/S.V.RAJAMOHAN Advocate on payment of necessary
charges SR NO.7002

Order

in
CRL MP.6379/2020

in
CRL A.417/2020

Date :16/10/2020

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