

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.6498 of 2020
in C.A.No.425 of 2020

Jawahar ... Petitioner

Versus

1.State by Deputy Superintendent of Police,
Tiruchengode, Namakkal District,
In Crime No.118/2019,
Namakkal District.

2.Veeramani ... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 14(A) (1) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities Act) r/w 389(1) of the Code of Criminal Procedure, to suspend the sentence imposed in the judgment dated 09.09.2020 made in Spl.S.C.No.12 of 2019 on the file of the learned Special Court for SC & ST (POA) Act, Cases, Namakkal and release the petitioners on bail pending criminal appeal.

For Petitioner : Mr.S.Lakshmipathy

For R1 : Mr.C.Raghavan,
Government Advocate [Crl. Side]

For : No Appearance

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in judgment dated 09.09.2020 in Special S.C.No.12 of 2019, by the learned Sessions judge, Special Court for Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, Namakkal.

2.The petitioner was convicted for offence under Section 323 IPC r/w 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act and sentenced to undergo Rigorous Imprisonment for one year and to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for one month and for offence under Section 341 IPC r/w 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act the petitioner to undergo Rigorous Imprisonment for one month and to pay a fine of Rs.500/-, in default to undergo Simple Imprisonment for one week.

3.The case of the prosecution is that PW1 belongs to Arunthathiyar Community and he is a member of Scheduled Caste and he is working as Fitter in Sivaganesh Spinning Mills situated at Mettukadai. On 22.02.2019, at about 01.30 p.m., when PW1 was returning back to his working place after taking lunch in his two wheeler, the petitioner, who belongs to Vettuvagounder Community, restrained and abused PW1 by calling his caste name in public view and also pushed him and caused injuries on his chest, abdomen and back shoulder by kicking. When PW2 and PW3, who are the sons of PW1, attempted to rescue his father, the petitioner ran away from the place. Thereafter, PW2 and PW3 admitted PW1 in Government Hospital, Kumarapalayam, where PW11, the Doctor gave treatment and noted down external injuries found on him and issued Accident Register [Ex.P15]. From the Government Hospital, Kumarapalayam information sent to the respondent Police Station. PW12, the Inspector of Police attached to the respondent Police came to the Hospital, received the complaint [Ex.P1] from PW1, registered an FIR [Ex.P6] and sent requisition for appointment of Investigating Officer and thereby, PW13, the Deputy Superintendent of Police took up the investigation, prepared Observation Mahazar [Ex.P8] and Rough Sketch [Ex.P9] and examined the witnesses and recorded their statements, arrested the petitioner in the presence of witnesses, recorded the confession. On examination of witnesses and collection of documents including the community certificate [Ex.P4] of the petitioner, PW13 filed charge sheet before the trial Court.

4.During trial, the prosecution examined 13 witnesses and marked 9 documents. On the side of the defence, no witnesses and no documents were marked. On completion of trial, the petitioner was convicted and sentenced as stated above.

5.The learned counsel for the petitioner submitted that the prosecution failed to prove the guilt of the petitioner beyond reasonable doubt. He further submitted that the trial Court did not consider the defence of the petitioner. Though PW2 and PW3 have corroborated the evidence of PW1, they have admitted that they are neighbours and belongs to same community of PW1. Hence, PW2 and PW3 are interested witnesses and their evidence cannot be relied upon. Further, PW4 to PW8 are persons, who were present in the scene of occurrence, have not spoken anything about the petitioner committing the offence. In this case, PW6 and PW7 have not supported the case of the prosecution. Though the alleged offence is said to have taken place in public view, no independent witnesses examined, only the relatives of PW1 viz., PW2, PW3, PW4 and PW5 and official witnesses viz., PW9, PW10, PW11 and PW12 were examined. The non-examination of independent witnesses is fatal and falsify the case of the prosecution.

6.The learned counsel for the petitioner further submitted that the trial Court acquitted the petitioner from the charges under Sections 3(1)(r) and 3(1)(s) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Amendment Act and Section 294(b), 355 r/w 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Amendment Act and Section 506(i) IPC r/w 3(2)(va) of the Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Amendment Act and on set of evidence of materials had convicted the petitioner as stated above is not proper and the same is to be decided during hearing of the appeal. Hence, he prayed to suspension of sentence.

7.The learned Government Advocate [Cr1. Side] appearing for the respondent Police submitted that PW1 belongs to Arunthathiyar Community and the petitioner belongs to Vettuvagounder Community. On 22.02.2019, at about 01.30 p.m., when PW1 was returning back to his work place after taking lunch in his two wheeler, the petitioner restrained and abused PW1 by calling his caste name in public view and also pushed him and caused injuries on the chest, abdomen and back shoulder by kicking. When PW2 and PW3 attempted to rescue their father, the petitioner ran away from the place. Thereafter, PW2 and PW3 admitted PW1 in Government Hospital, Kumarapalayam, where PW11, the Doctor gave treatment and noted down external injuries found on him and issued Accident Register [Ex.P15]. PW12, the Inspector of Police attached to the respondent Police went to the Hospital, received the complaint [Ex.P1] from PW1, registered an FIR [Ex.P6] and sent requisition for appointment of Investigating Officer and thereby, PW13, the Deputy Superintendent of Police took up the investigation, prepared Observation Mahazar [Ex.P8] and Rough Sketch [Ex.P9] and examined the witnesses and recorded their statements, arrested the petitioner in the presence of witnesses, recorded the confession and on completion of investigation filed charge sheet before the trial Court.

8.It is further submitted PW2 and PW3 are the sons of PW1 and their evidence are in corroboration with the evidence of PW1 and the complaint [Ex.P1] in respect of causing injuries and abusing PW1 in public place. PW11, the Doctor has examined PW1 and issued the Wound Certificate [Ex.P5] and recorded that one known male person was assaulted him and noted down external injuries found on him. In this case, PW9 and PW10/Revenue Officials have issued Community Certificates for PW1 and the petitioner and the same were marked as Exs.P3 & P4. Though PW6 and PW7 have not supported the case of the prosecution and turned hostile, the evidence of PW1, PW2 and PW3 and Doctor/PW11 are corroborated each other. From the evidence of PW1 to PW3, it is clear that that petitioner waylaid the vehicle of PW1 and assaulted him. On considering the evidence and materials let-in by the prosecution, the trial Court had rightly convicted the petitioner. Hence, he opposed for ordering suspension of sentence.

9.On considering the rival submissions and on perusal of the materials, it is seen that in this case, PW2 to PW4 are relatives of PW1 and PW9, PW10, PW11 and PW12 are official witnesses and no independent witnesses were examined and PW6 and PW7 were not supported the case of the prosecution and turned hostile. Further, there is a 24 hours delay in lodging the complaint [Ex.P1], for which no explanation was given. Finding infirmities in the prosecution case and arguable points involved in the appeal, considering the period of incarceration and the appeal is not likely to be taken up for final hearing in the near future, hence, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

10.Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute 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 the learned Sessions Judge, Special Court for Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act, Namakkal 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 every English Calender Month at 10.30 a.m., till the disposal of the appeal. The petition is ordered.

-sd/-
18/12/2020

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 SESSIONS JUDGE,
SPECIAL COURT FOR SCHEDULED CASTE AND
SCHEDULED TRIBE [PREVENTION OF ATROCITIES] ACT,
NAMAKKAL.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE DEPUTY SUPERINTENDENT OF POLICE,
TIRUCHENGODE, NAMAKKAL DISTRICT,
NAMAKKAL DISTRICT.

+1C.C. to M/S.S.LAKSHMIPATHY Advocate on payment of
necessary charges SR NO.8448

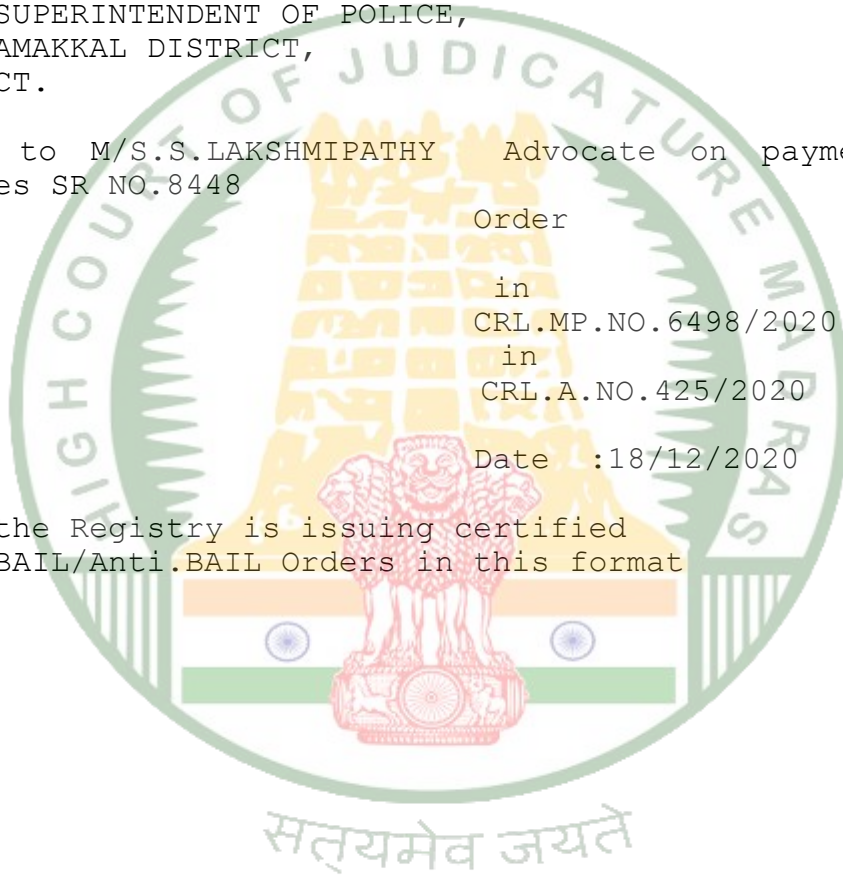
Order

in
CRL.MP.NO.6498/2020
in
CRL.A.NO.425/2020

Date :18/12/2020

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

MK:30/12/2020



WEB COPY