

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.6638 of 2020

in

Crl.R.C.No.956 of 2020

1.Shanmugam
2.Poonkumar
3.Manickam

... Petitioners

Versus

State Rep. by,
The Inspector of Police,
Kadathur Police Station,
Crime No.39 of 2014.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 397(1) of the Code of Criminal Procedure, to suspend the sentence imposed on the petitioners by the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam in Crl.A.No.35/2019 dated 07.10.2020, confirming the conviction and sentence imposed on the petitioners by the Judicial Magistrate-II, Gobichettipalayam in C.C.No.72/2014, dated 15.10.2019 pending disposal of the above said Criminal Revision Petition.

For Petitioner : Mr.S.Parthasarathy

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

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam in Crl.A.No.35 of 2019, dated 07.10.2020, confirming the judgment, dated 15.10.2019, in C.C.No.72 of 2014 rendered by the learned Judicial Magistrate No.II, Gobichettipalayam.

2.The petitioners/A1, A2 & A7 were convicted for offence under Sections 148, 324 IPC and sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one week simple imprisonment for each offence. The 2nd petitioner also convicted for offence under Section 326 IPC and sentenced to undergo two years Rigorous Imprisonment and to pay a fine of Rs.2,000/-, in default to undergo Simple Imprisonment for one month.

3.The case of the prosecution is that PW1/defacto complainant and the petitioners were residing at Pudhu Kothukadu, Munian Street, Erode, within the jurisdiction of the respondent Police. The 1st petitioner was breeding pigs nearby the residence of PW1, which causes health hazard to him and his family members. Thereafter, PW1 lodged a complaint to Panchayat Office, Ariyappampalayam and the Sub Collector, Gobichettipalayam. Due to which, there was enmity between the petitioners and PW1. On 27.02.2014, at about 08.30 p.m., the petitioners along with other accused armed with iron road, went to the house of PW1, used abusive words and assaulted him, his son/PW2, his wife/PW3, his daughter/PW4 and his grand mother/PW5. Due to which, PW1 to PW5 sustained injuries and gone to the Government Hospital, Gobichettipalayam, where PW10, Doctor gave treatment to PW1, PW3 to PW5 as in patient. On receiving the information through wireless, PW12 had gone to the Government Hospital, Gobichettipalayam, received the complaint [Ex.P1] and registered an FIR [Ex.P14] in Crime No.39 of 2014, for offence under Sections 148, 294(b), 323, 324, 326, 506(ii) r/w 149 IPC. PW13, thereafter, took up the investigation, visited the place of occurrence on 01.03.2014, at about 03.00 p.m., enquired the witnesses, prepared Observation Mahazar [Ex.P2], Rough Sketch [Ex.P15] and also recovered MO1 and MO2, which were available in the scene of occurrence. The seized Material Objects were forwarded to the Court through Form 91 [Ex.P16]. PW6 is the witness for Observation Mahazar [Ex.P2]. PW7 is the witness for seizure of MO1 and MO2. PW8 and PW9 are the residents, near the scene of occurrence and saw the accused assaulting PW1 to PW5. PW11 is the Doctor in Private Hospital, where PW2 had taken treatment on 04.03.2014. On completion of investigation, charge sheet came to be filed before the trial Court. During the trial, the prosecution examined 13 witnesses and marked 16 documents and 3 Material Objects. The trial Court on the evidence and materials adduced by the prosecution, acquitted A3 to A6 and convicted the petitioners/A1, A2 & A7, by judgment dated 15.08.2019 in C.C.No.72 of 2014, which was confirmed by the lower appellate Court, by judgment, dated 19.10.2020 in C.A.No.35 of 2019.

4.The learned counsel for the petitioners submitted that the petitioners and PW1 to PW5 are all relatives and they have some dispute with regard to open place available in front of the house of PW1. The petitioners used that place for piggery. Both belong to Boyar community. The learned counsel further submitted that the breeding of pigs as well, eating pork is customary in their community. Hence, PW1 projecting as though breeding of pigs is causing health hazard, is a got up story, to vacate the petitioners from using the open place. He further submitted that the injured witnesses, in this case, are PW1 to PW5, who are all family members. There are inter se contradictions between the evidence of each of the witnesses. PW3, who appeared before PW10, Doctor stated that he was assaulted by three persons. PW1 stated he was assaulted by five persons. PW4 stated that he was assaulted by one person. PW5 stated that she was assaulted by three persons. PW2, who is the son of PW1 and PW3, did not go to the Government Hospital, Gobichettipalayam, instead he went to private hospital four days after the occurrence, where he stated that he sustained fracture on his toe. PW11, Doctor

gave treatment to PW2 and issued [Ex.P13] wound certificate and [MO3] X-Ray. No reason has been given for PW2 not going to the Government Hospital. The entire family were injured and gone to the Government Hospital, but PW2 had not gone to the Government Hospital to aid his parents and sister and also take treatment.

5.The learned counsel for the petitioner further submitted that the trial Court as well, the lower appellate Court had got swayed away that due to breeding of pigs, health hazard would be caused to the people and to the environment, which is nobodies case. No witnesses from Gobichettipalayam Municipality and from Ariyappampalayam Panchayat have not stated anything with regard to health issues. PW1 to PW5 are all motivated witnesses and they gave false version and they were not present in the scene of occurrence, as could be seen from the contradictory statement between each other. Further, PW10 admitted that PW1, PW3 to PW5 have left the hospital without informing the Doctor therein and hence, no wound certificate could be given to them.

6.The evidence of PW2 is highly doubtful for the reason that he goes to the hospital only on 04.03.2014, which is four days after the occurrence i.e., on 27.02.2014. In this case, PW8 and PW9 are got up as eye witnesses, which were disbelieved by the trial Court. Further, the trial Court on the same set of evidence, acquitted A3 to A6 and the same analogy applies to the petitioners herein. Thus, the trial Court failed to look into the above aspects, wrongly convicted the petitioners and the lower appellate Court had also not independently gone into the evidence and materials. Hence, prayed to suspend the sentence.

7.The learned Additional Public Prosecutor appearing for the respondent submitted that PW1 to PW5 are injured in this case. PW1, PW3 to PW5 took treatment in Government Hospital, Gobichettipalayam, from there, the message was sent to PW12. PW12, on receipt of message, went to the Hospital, received the complaint, registered FIR [Ex.P14]. Thereafter, PW13 took up the investigation. During investigation, it was found that there was some dispute and previous enmity between PW1 and the petitioners, since the petitioners were breeding pigs in front of PW1's house. PW1 objected the same and made complaint to Ariyappampalayam Panchayat and Sub Collector, Gobichettipalayam. Annoyed over the same, on 27.02.2014, at about 08.30 p.m., all the accused had gone to the house of PW1, called him out, picked up quarrel and assaulted him. When PW2 to PW5, who are the family members of PW1, attempted to rescue PW1, they were also assaulted. PW2 sustained fracture on his toe. PW1, PW3 to PW5 were taken to Government Hospital, Gobichettipalayam, from there information was sent to the respondent Police. Thereafter, PW10 collected the Accident Register, wound certificate of injured persons, recorded the statements of PW10 and PW11, the Doctors who gave treatment. On completion of investigation, filed charge sheet before the trial Court. The trial Court on examination of the witnesses and materials, convicted the petitioner/A1, A2 and A7 and acquitted A3 to A6, against which, the appeal filed by the petitioners got dismissed.

8. On considering the rival submissions and on perusal of the materials, it is seen that in this case, PW1 to PW5 and the petitioners belong to Boyar community. It is common in that community breeding of pig and pork is a staple food for them. There is some dispute with regard to enjoyment of the vacant land available in front of the house of PW1. Further, there is no evidence to show that the breeding of pig has been objected by the Ariyappampalayam Panchayat Officials and Sub Collector, Gobichettipalayam. The Courts below were swayed away and given a finding that the breeding of pig would cause health hazard and environmental problem. Further, PW1 to PW5 all hail from one family. PW1, PW4 & PW5 left the hospital against the advice of the Doctor, which is confirmed by PW10. PW11, the Doctor gave treatment to PW2 on 04.03.2014, which is four days after the occurrence, for which no reason was given by PW2 for the delay. The witnesses for Observation Mahazar and Rough Sketch namely PW6 and PW7 are relatives of PW1. The trial Court disbelieving the evidence and materials, acquitted A3 to A6.

9. Further, there are several infirmities in the prosecution case and arguable points involved in the revision. The revision is not likely to be taken up for final hearing in the near future, hence, this Court is of the considered view that the petitioners herein are entitled to the relief of grant of suspension of sentence.

10. 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.5,000/- (rupees Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.II, Gobichettipalayam 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 once in three months on first working day of English Calendar Month i.e., from December 2020 at 10.30 a.m., till the disposal of the revision. The petition is, accordingly, ordered.

-sd/-

05/11/2020

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 JUDICIAL MAGISTRATE,
NO.II, GOBICHETTIPALAYAM.

2 THE CHIEF JUDICIAL MAGISTRATE
ERODE (FOR INFORMATION)

<https://hcsservices.ecourts.gov.in/hcsservices/>

3 III ADDITIONAL DISTRICT AND
SESSIONS JUDGE, ERODE AT GOBICHETTIPALAYAM.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 INSPECTOR OF POLICE,
KADATHUR POLICE STATION,

6 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

C.C. to M/S. S.PARTHASARATHY Advocate on payment of necessary
charges SR.NO.7319

Order

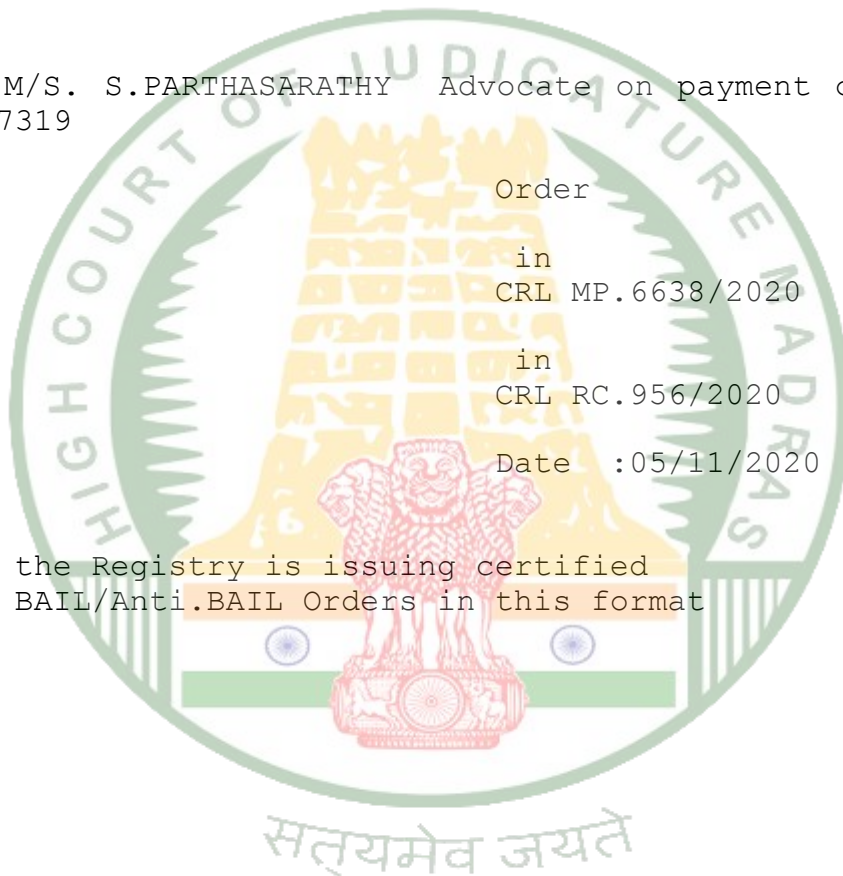
in
CRL MP.6638/2020

in
CRL RC.956/2020

Date :05/11/2020

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