

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.7059 of 2020
in Crl.A.No.459 of 2020

1.Theethan @ Samikannu
2.Rukku

... Petitioners

Versus

State by:
The Inspector of Police,
Kallavi Police Station,
Krishnagiri District.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) of the Code of Criminal Procedure, to suspend the sentence imposed against the petitioners in the judgment dated 13.10.2020 made in S.C.No.176 of 2016 on the file of the Additional District and Sessions Court, Krishnagiri and release them on bail pending disposal of the Appeal in C.A.No.459 of 2020 on the file of this Court.

For Petitioners : Mr.P.M.Duraiswamy

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

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the learned Additional Sessions Judge, Krishnagiri in S.C.No.176 of 2016, dated 13.10.2020.

2.The petitioners were convicted for offence under Sections 294(b) and Section 3(ii) of the Tamil Nadu Public Property Damage and Loss Act, 1992. For offence under Section 294(b) IPC, the petitioners sentenced to undergo three months Simple Imprisonment and for offence under Section 3(ii) of the Tamil Nadu Public Property Damage and Loss Act, 1992, the petitioners sentenced to undergo three years Rigorous Imprisonment and to pay a fine of Rs.10,000/- each, in default, to undergo three months Simple Imprisonment.

3.The gist of the case is that on 04.05.2011, at about 04.00 p.m., the petitioners, resident of Kollappatti Village, damaged 13 meter water canal of the Public Works Department due to the previous enmity with PW1 and caused a damage to the tune of Rs.15,00,000/-. On the complaint of PW1, the respondent Police issued CSR [Ex.P1]. Thereafter, both PW1 and the petitioners were called and steps were taken for compromise, but failed. Since PW1 sent representations to various authorities and higher police officials, no action taken. Hence, PW1 preferred a private complaint before the learned District Munsif cum Judicial Magistrate, Uthangarai, who forwarded the same to the respondent Police to conduct enquiry under Section 202 Cr.P.C and file a report within a period of three months. After completion of investigation, the respondent Police file charge sheet against the petitioners. The learned District Munsif cum Judicial Magistrate, Uthangarai committed the case to the Court of Sessions, Krishnagiri and the same was taken as S.C.No.176 of 2016. During trial, the prosecution examined 9 witnesses and marked 15 documents and 1 material object. On conclusion of trial, the learned Additional District Sessions Judge, Krishnagiri, convicted the petitioners as stated above.

4.The learned counsel for the petitioners submitted that the procedure adopted by the learned District Munsif cum Judicial Magistrate, Uthangarai is contrary to law. The learned counsel further submitted that PW8/Investigating Officer in this case admitted that he did not register the FIR, but on what provision, he conducted investigation is not known. PW8 has filed the charge sheet without specifying the offence committed by the petitioners. The learned District Munsif cum Judicial Magistrate on receipt of the charge sheet, without following the procedure contemplated in law, had committed the case to the Court of sessions and the learned Additional Sessions Judge mechanically taken the case on file. Further, the act of the learned District Munsif cum Judicial Magistrate is in violation of Section 202(a) Cr.P.C. Thus the cognizance taken by the learned District Munsif cum Judicial Magistrate itself is bad in law. On that ground alone, the appeal has to be allowed.

5.In this case, PW2 is the neighbour of PW1, PW3 is the Assistant Engineer of Agriculture Department, PW4 and PW5 are the wife and brother of PW1, PW6 and PW7 are the neighbours of PW1 and witnesses to the Observation Mahazar [Ex.P12], PW8 is the Investigating Officer, PW9 is the Junior Engineer of the Agriculture Department. Ex.P1 is the CSR copy, Ex.P2 is the private complaint, Ex.P3 to P10 are the complaints sent to various authorities, Ex.P11 is the report prepared by PW3. In Ex.P11, there is no mention about the inspection was conducted in presence of whom and what are the steps taken and no mention about the quantification of the damage caused. Exs.P12 to P14 are the Observation Mahazar and Rough Sketch. PW6 and PW7, who are the witnesses Exs.P12 to P14 admitted that they were visited

the scene of occurrence later and they are not aware of the contents of the documents. Ex.P15 is the Damage Report given by PW9. The report Ex.P15 is not as per law.

6.It is admitted that the water canal is maintained by association of agriculturist, who used the channel. Admittedly, in this case, no person from the association had been examined and also the persons, who were entrusted with the maintenance work and up keeping of the canal. The learned counsel further submitted that the trial Court finding PW8, the Investigating Officer did not conduct the investigation in proper manner and as per procedure, recommended departmental action to the Deputy Inspector General of Police, Salem against PW8. Likewise, the trial Court had given a direction to the Agriculture Department to set right the water canal by providing funds through the association. There was a dispute pending between the petitioners and PW1 and others. The trial Court suspended the sentence of the petitioner till 23.11.2020. Hence, he prayed to suspend the sentence of imprisonment.

7.The learned Government Advocate [Crl. Side] appearing for the respondent submitted that PW1 filed a private complaint against the petitioners which were forwarded to PW8. PW8/Investigating Officer on receipt of the complaint, conducted investigation based on the direction given by the learned District Munsif cum Judicial Magistrate, Uthangarai. On completion of investigation, filed the charge sheet before the Court of Sessions. The learned District Munsif cum Judicial Magistrate finding the petitioners committed the offence under the Tamil Nadu Public Property (Damage and Loss) Act, 1992, which is triable by the Sessions Court, had committed the case to the Additional Sessions Judge, Krishnagiri. The learned Sessions Judge had taken the case on file examined witnesses. PW1, PW2, PW4, PW5, PW6 and PW7 are the farmers, who have adjacent land of the petitioners. The canal, carrying water for agriculture purpose, passes through the land of the petitioners. The petitioners damaged the same and thereby, the denied the adjacent farmers to receive water and their livelihood. The witness clearly stated that they were taking water for agricultural activities with the aid of the bore well, due to the damage caused by the petitioners, they were unable to get the benefit of water through canal. Though PW8 did not register FIR in this case it would not be fatal to the case of the prosecution. The Engineers from the Agricultural Department PW3 and PW9 have inspected the place, submitted a report for the damages and loss. The trial Court considered all the materials had rightly convicted the petitioners.

8.On considering the rival submissions and on perusal of the materials, it is seen that in this case, no FIR has been registered and in the absence of registration of any FIR, it is strange how and what authority PW8 commenced the investigation, examined the witnesses, collected the documents. Except PW1, PW4 and PW5, other witnesses admitted that they were not present when

the occurrence had taken place and reached the place later. For non-examination of agriculturist association, who were entrusted with the maintenance of the canal, no explanation or reason was given. It is also seen that there is violation of Section 202 Cr.P.C. Further, there are several infirmities in the prosecution case and arguable points involved in the appeal. 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.

9. 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) with two sureties each for a like sum to the satisfaction of the learned Additional District Sessions Judge, Krishnagiri 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 2012 at 10.30 a.m., till the disposal of the appeal. The petition is ordered.

-sd/-

18/11/2020

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 ADDITIONAL DISTRICT AND SESSIONS JUDGE,
KRISHNAGIRI.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
KALLAVI POLICE STATION,
KRISHNAGIRI DISTRICT.

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+1C.C. to M/S.P.M.DURAIWAMY Advocate on payment of
necessary charges SR NO.7665

Order

in
CRL.MP.NO.7059/2020
in
CRL.A.NO.459/2020

Date :18/11/2020

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MK:24/11/2020



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