

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice D.KRISHNAKUMAR

CRL MP No. 7523 of 2020
in CrI.A No. 66 of 2020

Samson

... Petitioner

vs

State rep. By
The Inspector of Police,
P-3, Vyasarpadi Police Station,
Chennai.
(Cr.No.984 of 2017)

.... Respondent

Petition filed under Section 389(1) of Cr PC to suspend the sentence imposed in S.C.No.327 of 2018 dated 20.01.2020 on the file of the XVI Additional District and Sessions Judge, Chennai pending disposal of the Criminal Appeal.

For Petitioner .. Mr.V.Parthiban
for Mr.E.Kannadasan

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

ORDER

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

The petitioner has been arrayed as A1 in S.C.No. 327 of 2018 on the file of the XVI Additional Sessions Judge, City Civil Court, Chennai. He was accordingly convicted for the offence punishable under Section 302 IPC by judgment dated 20.01.2020 and sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo three months simple imprisonment. Seeking suspension of sentence, the present petition has been filed.

2.The case of the prosecution is that the petitioner along with A2 was drinking in front of the house of the deceased and P.W.1. The deceased and P.W.1 are brothers. This was questioned by the deceased

and thereafter an enmity was developed. On the date of occurrence, the accused persons waylaid the deceased. A2 caught hold of the deceased while the petitioner attacked him with an iron rod on the head of the deceased causing death.

3.Learned counsel appearing for the petitioner submitted that the evidence of P.W.1 ought not to have been accepted by the trial Court. There are material contradictions in the evidence given. In his examination, P.W.1 has stated that on 06.07.2017, this petitioner was not present. He has further stated in his cross-examination that A2 alone was present along with his two friends. There are also other witnesses, who have stated to have seen the occurrence. Even in the chief examination, P.W.1 has stated that A2 alone picked up the fight with the deceased. Thus, considering the above discrepancies coupled with the period of incarceration, as the petitioner has been under incarceration for nearly eleven months apart from the fact that A2 has already been acquitted, the sentence will have to be suspended.

4.Learned Additional Public Prosecutor appearing for the State submitted that the eye witness speak about the specific overt act against the petitioners. The trial Court has taken note of recovery under Section 27 of the Indian Evidence Act. The trial Court found that the motive has been established and therefore the petition requires to be dismissed.

5.We do find arguable points available in the appeal. The question for consideration is as to whether the petitioner is liable to be punishable under Section 302 IPC on the one hand or 304 IPC either Part I or Part II on the other. This is apart from the fact that as to whether the petitioner is entitled for acquittal or not. Therefore, considering the above along with the other fact, namely, A2 ha already been acquitted on the same evidence adduced while considering the period of incarceration, we are inclined to suspend the sentence.

6. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that the petitioner 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 XVI Additional Sessions Judge, Chennai, and on further condition that he shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-

21/12/2020

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 XVI ADDITIONAL SESSIONS COURT,
CHENNAI.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
P-3, VYSARPADI POLICE STATION,
CHENNAI.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI.

+1 C.C. to M/S.E.KANNADASAN Advocate on payment of necessary
charges SR.NO.8542

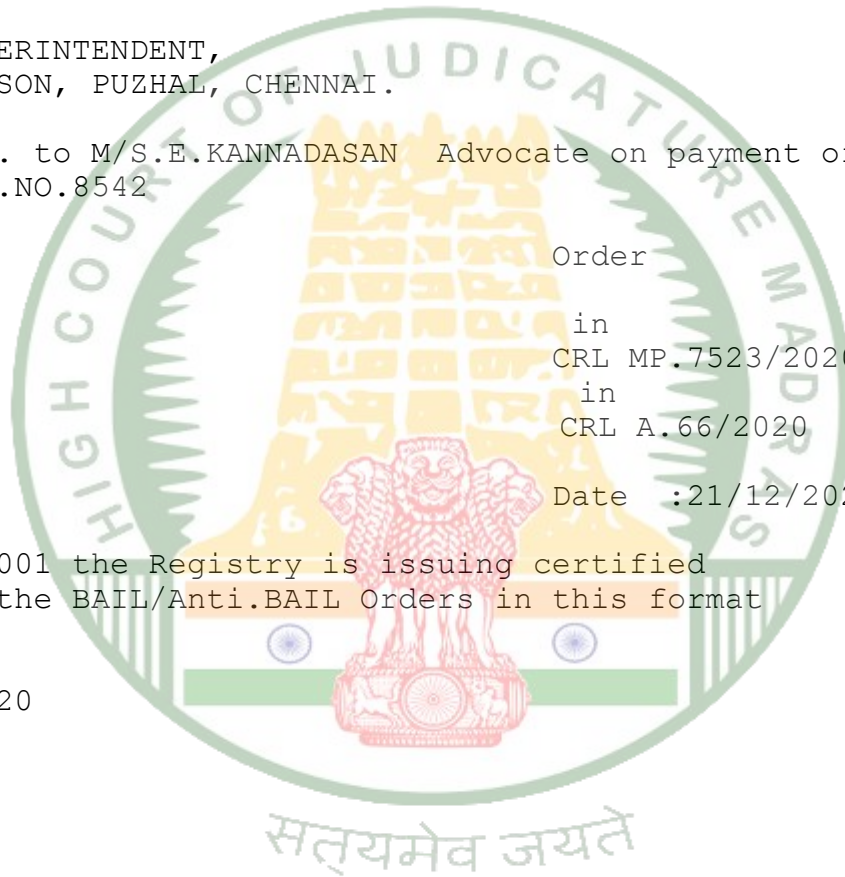
Order

in
CRL MP.7523/2020
in
CRL A.66/2020

Date :21/12/2020

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