

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.8669 of 2020

in

CRL.R.C.No.1237 of 2020

Anja Puli

... Petitioner

Vs.

State rep.by

The Sub-Inspector of Police(Crime),
B-3, St.George Police Station,
Chennai-600 009.
Crime No.84/2012

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 482 of Criminal Procedure Code to suspend the sentence imposed on the petitioner by the judgment dated 12.02.2020 made in C.A.No.240 of 2015 by the learned IV Additional Sessions Court, Chennai, confirming the judgment of the trial Court dated 16.11.2015 in C.C.No.2738 of 2013 passed by the learned VII Metropolitan Magistrate Court, George Town, Chennai, pending disposal of the above revision.

For Petitioner : Mr.M.Illiyas

For Respondent : Mr.C.Iyyappa Raj
Additional Government Pleader

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by judgment dated 12.02.2020 made in C.A.No.240 of 2015 by the learned IV Additional Sessions Court, Chennai, confirming the judgment of the trial Court dated 16.11.2015 in C.C.No.2738 of 2013 passed by the learned VII Metropolitan Magistrate Court, George Town, Chennai, pending disposal of the above revision.

2. The petitioner/accused in C.C.No.2738 of 2013, was facing trial for the offence under Sections 341, 323, 326, 506(2) IPC before the trial Court. On conclusion of trial, the lower Court had acquitted the petitioner for the offence under Section 341, 323 506 (2) and convicted the petitioner for the offence under Section 326 IPC and sentenced him to undergo one year RI and pay a fine of Rs.5,000/-. Against which, the petitioner had preferred an appeal before the IV Additional Sessions Court, Chennai in C.A.No.240 of 2015 and the learned VI Additional Judge, by order dated 12.02.2020, dismissed the appeal confirming the conviction and sentence of the

trial Court.

3. The case of the prosecution is that on 01.09.2012, P.W.1/Sekar went to the accused house and demanded him to return his gold jewels viz., one sovereign of chain and 3/4th sovereign of ring. At that time, the petitioner refused to return the gold jewels and beaten P.W.1 and his children with wooden log, due to which, P.W.1 sustained injury on the head. Thereafter, the petitioner ran away from the place. P.W.2 is the wife of P.W.1 and P.W.3 is the daughter of P.W.1 and P.W.1 was taken by his daughter-in-law to the Rajiv Gandhi Government Hospital at about 5.00 p.m. P.W.6 is the Doctor, who treated P.W.1 and registered Accident Register, which is marked as Ex.P4. P.W.7 is another Doctor, who treated P.W.1 and given Wound Certificate, which is marked as Ex.P5. P.W.8 is the Inspector of Police, who received information from the hospital and examined P.W.1. Thereafter, P.W.8 visited the scene of occurrence and prepared observation mahazaar and registered FIR. On the same day, the petitioner was arrested and confession was recorded. After examining the witnesses and documents, the charge sheet was filed in this case. During trial, P.W.1 to P.W.8 were examined and Exs.P1 to P11 were marked and the Court documents/C1 to C4 were marked and M.O.1 had been marked in this case. No witnesses were marked on the side of the defence. The trial Court, on considering the materials and evidence, had convicted the petitioner as stated above and the lower Appellate Court also dismissed the appeal confirming the conviction and sentence of the petitioner. Against which, the present petition has been filed.

4. The learned counsel for the petitioner would submit that P.W.1 is none other than the brother of the petitioner and there was a family dispute between the petitioner and P.W.1. P.W.2 and P.W.3 are the wife and the daughter of P.W.1. The independent witnesses namely P.W.4 for observation mahazar and P.W.5 for arrest and recovery from the house of the petitioner, had not supported the case of the prosecution. P.W.6 and P.W.7 are the Doctors, who given wound certificate. Though the Investigating Officer stated that the occurrence took place in the public, the witnesses presented in the scene of occurrence namely Muniyamma, Kalyani, Arayi were not examined as witnesses. Due to personal vengeance, the petitioner has been falsely implicated in this case. Further, the trial Court, without considering the materials and evidence, convicted the petitioner under Section 326 IPC. Hence, he prayed for grant of suspension of sentence to the petitioner.

5. The learned Additional Public Prosecutor would submit that the petitioner is none other than the brother of the victim/P.W.1. On 01.09.2012, P.W.1/Sekar went to the house of the accused and demanded the petitioner to return his gold jewels. At that time, the accused refused to return the gold jewels and beaten P.W.1, due to which, P.W.1 sustained injuries. P.W.6 is the Doctor, who noted the injuries sustained in the Accident Register/Ex.P4 and P.W.7 is another Doctor, who gave the Wound Certificate and clearly stated that P.W.1's skull was fractured, blood clot in the brain and was removed. Due to surgery, P.W.1 was inpatient from 15.09.2012 to 22.09.2020. The Trial

Court had considered all these aspects and convicted the petitioner and the Lower Appellate Court dismissed the appeal confirming the conviction and sentence of the trial Court. Hence, he opposed for grant of suspension of sentence to the petitioner.

6. Considering the submissions and on perusal of the materials, it is seen that the petitioner and P.W.1 are the brothers and due to some misunderstanding between them with regard to return of gold jewels, the petitioner attacked P.W.1 with wooden log and the witness for arrest and confession of P.W.5 had not supported the case, the recovery of M.O.1 becomes doubtful. No witnesses presented in the scene of occurrence were examined. Finding arguable points in favour of the petitioner, this Court is inclined to suspend the sentence imposed on the petitioner. Accordingly, the petitioner is directed to be enlarged on bail on condition to 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 VII Metropolitan Magistrate Court, George Town, Chennai 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 once in three months at 10.30 a.m. till the disposal of the revision.

-sd/-

23/12/2020

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 NO.VII METROPOLITAN MAGISTRATE
COURT, GEORGE TOWN,
CHENNAI

2 THE CHIEF METROPOLITAN
MAGISTRATE, EGMORE,
CHENNAI (FOR INFORMATION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE S.I OF POLICE (CRIME)
THE SUB-INSPECTOR OF POLICE (CRIME 0.B-3, ST
GEORGE POLICE STATION, CHENNAI-09.

5 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI, CHENNAI

C.C. to M/S.M.ILLIYAS Advocate on payment of necessary charges

Order

in
CRL MP.8669/2020

in
CRL.R.C.No.1237 of 2020

Date :23/12/2020

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RVR 29/01/2021



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