

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.M.P.Nos.7359, 7360 & 7363 of 2020

in CRL.A.No.474 of 2020

Subramani ... Petitioner in
Crl.M.P.No.7359 of 2020

Ramasamy ... Petitioner in
Crl.M.P.No.7360 of 2020

Krishnan ... Petitioner in
Crl.M.P.No.7363 of 2020

/versus/

The State represented by ... Respondent in Crl.Mps
The Inspector of Police,
Namagiripet Police Station,
Namakkal District.

Common Prayer: Criminal Miscellaneous Petitions filed under Section 389(1) of Criminal Procedure Code, to suspend the sentence imposed on the petitioners by a judgment dated 16.10.2020 in S.C.No.22 of 2017 passed by the learned Principal Sessions Judge, Namakkal, pending disposal of the above Crl.A.No.474 of 2020.

In All Crl.MPs

For Petitioners: Mr.J.Kannan

For Respondent : Mr.C.Raghavan

Government Advocate [Crl. Side]

ORDER

The petitioners herein are accused in S.C.No.22 of 2017, on the file of the Principal Sessions Judge, Namakkal, was convicted by the judgment dated 16.10.2020 for the offence under Sections 294(b) and 427 IPC. For offence under Section 427 IPC, the petitioners are sentenced to undergo Imprisonment for a period of two years and to pay a fine of Rs.1000/- each in default of payment of fine to undergo Simple Imprisonment for six months. For offence under Section 294(b) IPC, the petitioners are sentenced to undergo imprisonment for three

months and to pay a fine of Rs.1000/- each in default of payment of fine, to undergo Simple Imprisonment for one month. Aggrieved over the same, the present Criminal Appeal filed along with a petition for suspension of sentence.

2. The gist of the case is that on 08.04.2013, at about 3.30 a.m, while PW1/Govindaraj and PW6/Ramarajan were proceeding in a motor-cycle bearing Registration No.TN 28 AX 4677, the petitioners/accused waylaid the informant Govindaraj and witness Ramarajan and scolded them in a filthy language and assaulted PW1/Govindaraj and PW6/Ramarajan with iron rod and brick stones. The petitioners made criminal intimidation on them, damaged the bike of PW1/Govindaraj and caused loss to the tune of Rs.10,250/-. Hence, a complaint came to be lodged against the petitioners.

3. On the side of the prosecution, 11 witnesses have been examined as PW1 to PW11, Ex.P1 to Ex.P16 and M.O.1 were marked. On the defence side, no witness has been examined and no document was marked.

4. The contention of the learned counsel for the petitioners is that the petitioners have been falsely implicated in this case. The Trial Court erred in convicting the petitioner for the offence under Sections 427 and 294(b) IPC based on the uncorroborated evidence and materials. PW3 in his evidence deposed that PW1 and PW6 fell down from the bike and he never deposed regarding the damage of the vehicle caused by the petitioners. Earlier there was a dispute between the petitioners and the complainant which is admitted by PW1 in his cross examination that there is a counter case against PW1. Due to the previous enmity the complainant has falsely implicated the petitioners in this case and hence, prayed for granting bail to the petitioners.

5. The learned Government Advocate submitted that on 08.04.2013 at about 3 to 4 p.m., while PW1/the complainant was going to see the construction of the Ramar Koil, where he found some small construction in the vacant land, which is in dispute with the petitioners. Thereafter, while he was proceeding along with PW6/Ramarajan, the petitioners waylaid them and assaulted both PW1 and PW6 with brickstones and crowbar and caused damage to the two wheeler driven by PW1. Due to the said assault PW1 and PW6 sustained injuries and admitted in Rasipuram Government Hospital for treatment. On information, the respondent Police visited the Hospital and recorded the statement of PW1 and registered a complaint which is marked as Ex.P1. PW2, PW3 and PW6 reiterated the same facts as stated by PW1. PW4 and PW7 are the witness to the observation mahazer and both of them did not support the case of the prosecution. Ex.P3 is the damage certificate estimated the value of damage is Rs.10,250/- given by PW5/Balamurugan, Insurance Surveyor and Loss Assessor. The

convicted the petitioners and opposed for granting bail to the petitioners.

6. Considering the rival submissions and perusal of the materials, it is seen that there was a previous enmity between the petitioners and the complainant/P.W.1 and there is a counter case in Crime No.123 of 2013 against the complainant. It is seen that there was no contra evidence against the petitioners proved in the manner known to law. Further, in view of the fact that there are several infirmities in the prosecution case and there are arguable points involved in the appeal, as contended by learned counsel for petitioners and further, the appeal is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the petitioners herein is entitled to the relief of grant of suspension of sentence.

7. 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) each with two sureties each for a like sum to the satisfaction of the Principal Sessions Judge, Namakkal, 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 the first working day of English Calender Month at 10.30 a.m. till the disposal of the appeal.

-sd/-

30/11/2020

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 PRINCIPAL SESSIONS JUDGE,
NAMAKKAL.

2 THE INSPECTOR OF POLICE,
NAMAGIRIPET POLICE STATION,
NAMAKKAL DISTRICT.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+6 C.C. to M/S.J.KANNAN Advocate on payment of necessary
charges SR.Nos 7834, 7835, 7836

Order

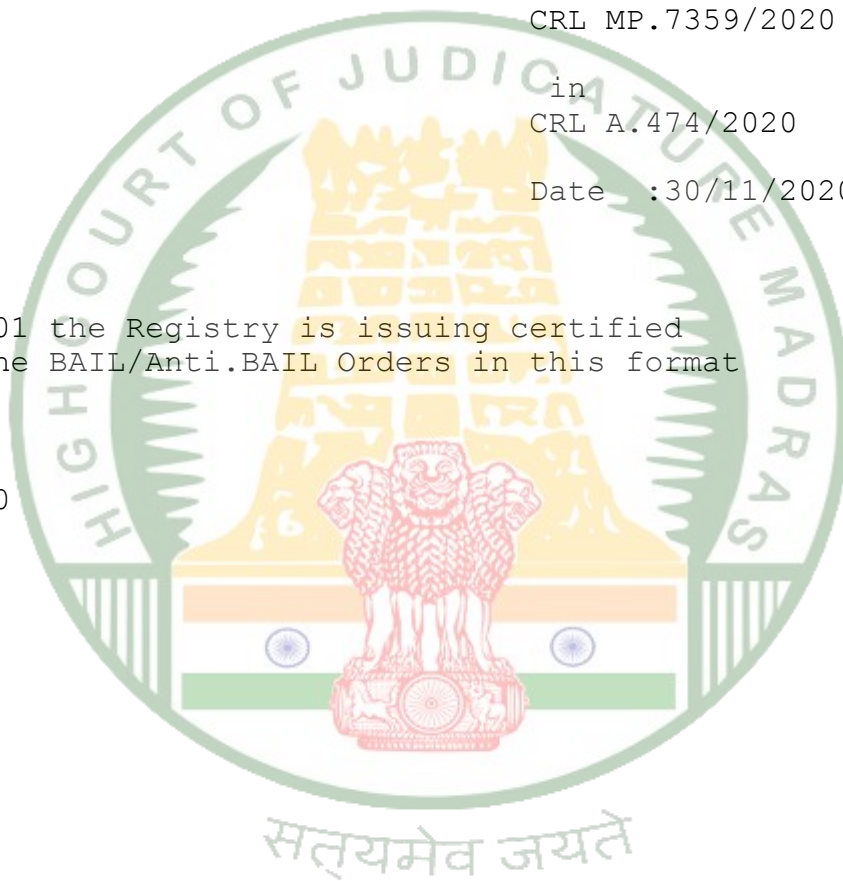
in
CRL MP.7359/2020

in
CRL A.474/2020

Date :30/11/2020

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MN-10/12/2020



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