

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.M.P.No.7658 of 2020

in C.A.No.487 of 2020

Mookuthi @ Appusamy

... Petitioner

Versus

1.The Deputy Superintendent of Police,
Omalur Sub-Division,
(Tharamangalam Police Station),
Omalur Taluk,
Salem District.
(Cr.No.739 of 2015).

2.Sithan

... Respondents

PRAYER: Criminal Miscellaneous Petition filed under Section 389(3) of the Code of Criminal Procedure, to suspend the sentence imposed on the petitioner in judgment made in S.C.No.273 of 2016, dated 29.10.2020 by the Principal Sessions Judge (Special Court of Scheduled Caste and Scheduled Tribes Prevention of Atrocities), Act, 1989, Salem, Salem District.

For Petitioner : Mr.R.Murugabharathi

For Respondent : Mr.C.Raghavan,
Government Advocate [Cr1. Side]

ORDER

This Criminal Miscellaneous Petition to suspend the sentence imposed on the petitioner in judgment dated 29.10.2020 in S.C.No.273 of 2016, by the learned Principal Sessions Judge, Salem (Special Judge of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)), Act, 1989, Salem.

2. The petitioner was convicted for offence under Section 294(b) IPC and sentence to undergo imprisonment for three months; for offence under Section 323 IPC, sentenced to undergo imprisonment for one year and to pay a fine of Rs.1,000/-, in default, to undergo imprisonment for three months; for offence under Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, sentenced to undergo imprisonment for three years and to pay a fine of

Rs.1,000/-, in default to undergo imprisonment for nine months and for offence under Section 506(i) IPC, sentence to undergo imprisonment for one year.

3. The case of the prosecution is that PW1/the defacto complainant belongs to Hindu-Arunthathiar, a Scheduled Caste Community and the petitioner belongs to Hindu-Vanniyar Community. PW1 borrowed a sum of Rs.25,000/- from the petitioner and in due course, he returned Rs.20,000/- on installments and he is to pay the balance amount of Rs.5,000/- to the petitioner. While so, on 30.11.2015, at about 10.00 a.m., while PW1 was standing along with PW4 to PW6 in front of Karukkalvadi Panchayat Office, the petitioner came there and started abusing PW1 with filthy language by calling his caste name and also assaulted with hands on his left side of his body and face and left there. The petitioner, at about 02.00 p.m., again went to the house of PW1, threatened him with dire consequences. Thereafter, the petitioner was admitted in Omalur Government Hospital and took treatment as inpatient. From hospital, information was sent to the respondent Police. On instruction of PW15/the Sub Inspector of Police at Tharamangalam, PW14/the Special Sub Inspector of Police went to the Omalur Government Hospital, enquired PW1 and received the complaint [Ex.P1]. PW15, the Sub Inspector of Police received the complaint from PW14 and registered an FIR in Crime No.739 of 2015 [Ex.P7]. As per the proceedings of the Superintendent of Police, Salem, PW17, the Deputy Superintendent of Police took up the investigation, visited the scene of occurrence, prepared Observation Mahazar [Exs.P5 & P6], Rough Sketch [Exs.P9 & P10], recorded the statement of witnesses present in the scene of occurrence, arrested the petitioner, received community certificates [Exs.P3 & P4] from PW8 and PW9, examined the Doctor/PW7, who gave treatment to the petitioner and on completion of investigation, filed the charge sheet before the trial Court.

4. During trial, the prosecution examined 15 witnesses and marked 10 documents. On the side of the defence, no witness was examined and no document was marked. On appreciation of evidence and materials, the petitioner was convicted and sentenced by the trial Court as stated above.

5. The learned counsel for the petitioner submitted that the prosecution has failed to prove the case beyond reasonable doubt against the petitioner for offence under Sections 294(b), 323, 506(i) IPC and Section 3(1)(x) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities), Act, 1989. The learned counsel further submitted that the place of occurrence is not proved through the oral and documentary evidence. In the Rough Sketch [Ex.P9], it is seen that the occurrence had taken place in front of the panchayat office, but PW1 in his evidence stated that the occurrence had taken place inside the panchayat office. Hence, the discrepancy with regard to place of occurrence is fatal to the case of the prosecution. It is further submitted that the contents in the complaint [Ex.P1] are not

corroborated the evidence of PW1. PW16 in her evidence stated that she had gone to the Panchayat Office and she was allotted work far away from the place of occurrence. Hence, it is not possible that she was present in the scene of occurrence and her evidence is doubtful.

6. The learned counsel for the petitioner further submitted that there are many discrepancy in the evidence of PW1 to PW3 and their statement recorded under Section 164 Cr.P.C. PW1 in his evidence has not stated about the alleged second occurrence, which is said to have taken place in the house of PW1. PW2 has not corroborated the evidence of PW1. PW3/Son of PW1 has not stated about the specific words used by the petitioner in second occurrence. Hence, the ingredients of Section 506(i) IPC is not proved by the prosecution. Further, in this case the independent witnesses were not examined by the prosecution even the witnesses are available in and around both occurrence place. Hence, he prayed for suspension of sentence till the disposal of the appeal.

7. *Per contra*, the learned Additional Public Prosecutor appearing for the respondent Police submitted that PW1/the defacto complainant belongs to Hindu-Arunthathiar, a Scheduled Caste Community and the petitioner belongs to Hindu-Vanniyar Community. PW1 borrowed Rs.25,000/- from the petitioner and in due course, he returned Rs.20,000/- on installments and he is to pay the balance amount of Rs.5,000/- to the petitioner. On 30.11.2015, at about 10.00 a.m., while PW1 was standing along with PW4 to PW6 in front of Karukkalvadi Panchayat Office, the petitioner came there and started abusing PW1 with filthy language by calling his caste name and also assaulted with hands on his left side of his body and face and left there. The petitioner, at about 02.00 p.m., again went to the house of PW1, threatened him with dire consequences. Thereafter, the petitioner was admitted in Omalur Government Hospital and took treatment as inpatient. From the hospital, information was sent to the respondent Police. On instruction of PW15/the Sub Inspector of Police at Tharamangalam, PW14/the Special Sub Inspector of Police went to the Omalur Government Hospital and enquired PW1 and received the complainant [Ex.P1]. PW15, the Sub Inspector of Police received the complaint from PW14 and registered an FIR in Crime No.739 of 2015 [Ex.P7]. PW17, the Deputy Superintendent of Police took up the investigation, visited the scene of occurrence, prepared Observation Mahazar [Exs.P5 & P6], Rough Sketch [Exs.P9 & P10], recorded the statement of witnesses present in the scene of occurrence, arrested the petitioner, received community certificates [Exs.P3 & P4] from PW8 and PW9, examined the Doctor/PW7, who gave treatment to the petitioner and on completion of investigation, filed the charge sheet before the trial Court.

8. It is further submitted that all the evidence are cogent and reliable one. The injured witness PW1 corroborated the medical evidence/PW7 and the Accident Register [Ex.P2] and there is no delay

in lodging the complaint. Further, the minor discrepancies and non examination of available witnesses are not fatal to the case of the prosecution. Therefore, the above said all aspects are considered by the trial Court and the trial Court came to the conclusion and convicted the petitioner. Hence, he opposed for granting of suspension of sentence.

9. On considering the rival submissions and on perusal of the materials, it is seen that there are arguable points involved in the appeal, considering the period of incarceration and the appeal is not likely to be taken up for final hearing in the near future, the trial Court already suspended the sentence, hence, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

10. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner 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 Principal Sessions Judge, Salem (Special Judge of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities)), Act, 1989, Salem, 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., i.e., from January 2021 till the disposal of the appeal. The petition is ordered.

-sd/-
18/12/2020

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 PRINCIPAL SESSIONS JUDGE, SALEM
(SPECIAL JUDGE OF SCHEDULED CASTES
AND SCHEDULED TRIBES (PREVENTION OF
ATROCITIES)), ACT, 1989, SALEM

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE DEPUTY SUPERINTENDENT OF
POLICE, OMALUR SUB - DIVISION,
(THARAMANGALAM POLICE STATION, OMALUR TALUK,
SALEM DISTRICT)

C.C. to R.MURUGA BHARATHI Advocate on payment of necessary
charges

Order

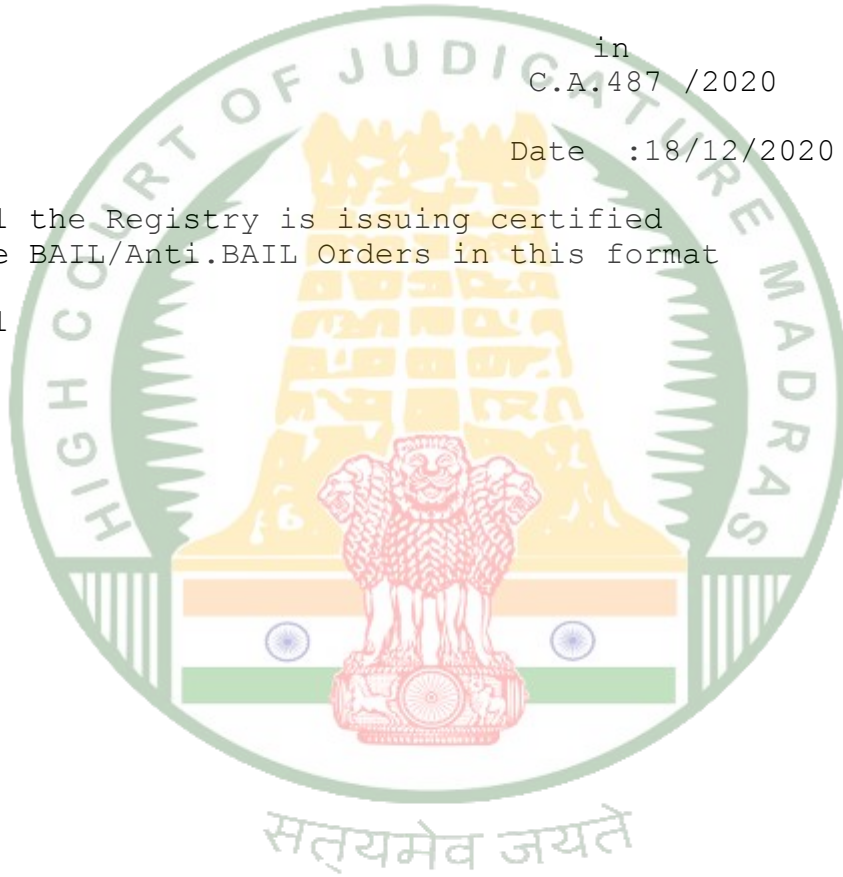
in
CRL MP.7658/2020

in
C.A.487 /2020

Date :18/12/2020

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