

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.8407 of 2020

in C.A.No.519 of 2020

Surya

... Petitioner

Versus

The State Represented by,
Deputy Superintendent of Police,
Namakkal Sub Division, Namakkal District
in Crime No.72/2019
of Erumapatti Police Station.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(3) of the Code of Criminal Procedure, to suspend the sentence of conviction of Accused No.2 in Special Sessions Case No.23 of 2019 passed on 09.09.2020 by Special Judge, Special Court for SC&ST (POA) Act, Namakkal pending disposal of this appeal.

For Petitioner : Mr.M.Marimahesh

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

ORDER

This Criminal Miscellaneous Petition to suspend the sentence imposed on the petitioner in judgment dated 09.09.2020 in Special S.C.No.23 of 2019 passed by the learned Sessions Judge, Special Court for SC & ST (POA) Act, Namakkal.

2. The petitioner/A2 was convicted for offence under Section 147 IPC r/w 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for six months; for offence under Section 148 IPC r/w 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, sentenced to undergo to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for 6 months; for offence under Section 323 IPC r/w 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, sentenced to undergo rigorous imprisonment for one year and to pay a fine of

Rs.1,000/-, in default to undergo simple imprisonment for six months; for offence under Section 324 IPC r/w 3(2)(va) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, sentenced to undergo rigorous imprisonment for three years and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for six months.

3. The case of the prosecution is that PW1/defacto complainant and PW2 are friends and they belong to Devendrakula Velalar Community which comes under the Scheduled Caste. A1 to A5 & A7 belong to Vanniyar Community which comes under Most Backward Class. A7 belongs to Nathamar Community, which comes under Backward Class. On 29.04.2019, PW1 and PW2 while returning home at about 05.30 p.m., after having tiffin in Alagatham Road Junction to Bodinaickampatty near library under the tamarind tree, A1 to A7 formed as unlawful assembly with 'Thadi'. At that time, PW1 asked A1 why they are standing in the place, immediately A1 got angry and used filthy language by using the caste name and also assaulted PW1 on the head, his back side hip, thigh. While intervention of PW2, the friend of PW1, all the accused assaulted PW2 with 'Thadi and 'Kattai' upon left side, back side, left side shoulder and rear of head and also implicated blood injuries to PW2. On hearing the noise, the neighbours near the scene came there and all the accused ran away. Thereafter, PW1 and PW2 got admitted in the Government Hospital, Namakkal, where the PW9/Head Constable attached to the respondent Police came and obtained the complaint [Ex.P1]. As per the proceedings [Ex.P17] of the Superintendent of Police, Namakkal, PW11, the Deputy Superintendent of Police, took up the investigation, examined the witnesses present in the scene of occurrence, prepared Observation Mahazar [Ex.P18], Rough Sketch [Ex.P19], seized the Material Objects [MO1 & MO2] from the place of occurrence, examined A6 in presence of witnesses and recorded the confession statement [Ex.P21], pursuant to which, MO3 to MO5 were seized, arrested the accused and remanded to judicial custody. PW6, Tahsildar at Sendamangalam Taluk issued community certificate [Exs.P5 & P6] for PW1 and PW2. PW8, Deputy Tahsildar, Sendamangalam issued community certificate [Exs.P9 to P15] for all the accused. On examination of witnesses and collection of documents, charge sheet came to be filed before the trial Court.

4. During trial, the prosecution examined 11 witnesses and marked 24 documents and 5 material objects. On the side of the defence, no witness was examined and no document was marked. The trial Court on appreciation of evidence and materials let-in by the prosecution, convicted the petitioner/A2 along with 6 others as stated above.

5. The learned counsel for the petitioner submitted that PW1/defacto complainant and PW2 are friends and they belong to Devendrakula Velalar Community which comes under the Scheduled Caste. A1 to A5 & A7 belong to Vanniyar Community which comes under Most Backward Class. A7 belongs to Nathamar Community, which comes under

Backward Class. He further submitted that the complaint [Ex.P1] lodged by PW1 has not corroborated his evidence. PW1 in his complaint [Ex.P1] stated that the accused scolded him by using caste name, but in his evidence he has not stated about the uttering his caste discrimination by the accused. PW2, the friend of PW1 stated that A1 uttered the caste name by scolding PW1, PW1 has not stated about the fact that A1 scolded him by uttering his caste name. While being so, the evidence of PW2 cannot be relied on and his evidence in this regard is brushed aside.

6. The learned counsel for the petitioner further submitted that PW3 in cross examination admitted that there is 200 feet between the village of Alaganatham and the place of occurrence. PW3 has not known the peoples, who were present in the scene of occurrence and no person present there were arrayed as witness in this case. Hence, it is clear that the occurrence has not taken place before the public view. PW4, who were present at the time of occurrence, has not stated that A1 scolded PW1 by calling his caste name in the public view. PW5 stated that he has affixed his signature in the Observation Mahazar [Ex.P18] on the instruction of the investigating officer/PW11. Thus, the evidence of PW1 to PW5 have not corroborated the prosecution case. Further, the evidence of PW1 and PW2 with regard to the injuries sustained by them are not tallied with the injuries sustained recorded in the Accident Register [Exs.P7 & P8]. All the witnesses are all deposed against the other accused and no against the petitioner/A2. 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 that PW1/defacto complainant and PW2 are friends and they belong to Devendrakula Velalar Community which comes under the Scheduled Caste. A1 to A5 & A7 belong to Vanniyar Community which comes under Most Backward Class. A7 belongs to Nathamar Community, which comes under Backward Class. On 29.04.2019, PW1 and PW2 while returning to home at about 05.30 p.m., A1 to A7 formed as unlawful assembly with 'Thadi'. At that time, PW1 asked A1 why they are standing in the place, immediately A1 got angry and used filthy language by using the caste name and also assaulted PW1 on the head, his back side hip, thigh. While intervention of PW2, the friend of PW1, all the accused assaulted PW2 with 'Thadi and 'Kattai' upon left side, back side, left side shoulder and rear of head and also implicated blood injuries to PW2. On hearing the noise, the neighbours near the scene came there and all the accused ran away. Thereafter, PW1 and PW2 got admitted in the Government Hospital, Namakkal, where the PW9/Head Constable attached to the respondent Police came and obtained the complaint [Ex.P1]. As per the proceedings [Ex.P17] of the Superintendent of Police, Namakkal, PW11, the Deputy Superintendent of Police, took up the investigation, examined the witnesses present in the scene of occurrence, prepared Observation Mahazar [Ex.P18], Rough Sketch [Ex.P19], seized the

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8. The trial Court on conclusion of trial had rightly convicted the petitioner/A2 with other accused and found the prosecution has proved the case beyond all reasonable doubt. Hence, he opposed the grant 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, 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 Sessions Judge, Special Court for SC & ST (POA) Act, Namakkal, 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

WEB COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SESSIONS JUDGE,
SPECIAL COURT FOR SC & ST (POA) ACT,
NAMAKKAL

2 THE DEPUTY SUPERINTENDENT OF POLICE,
NAMAKKAL SUB DIVISION, NAMAKKAL DISTRICT
IN CR.NO.72/2019 OF ERUMAPATTI POLICE STATION.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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

Order

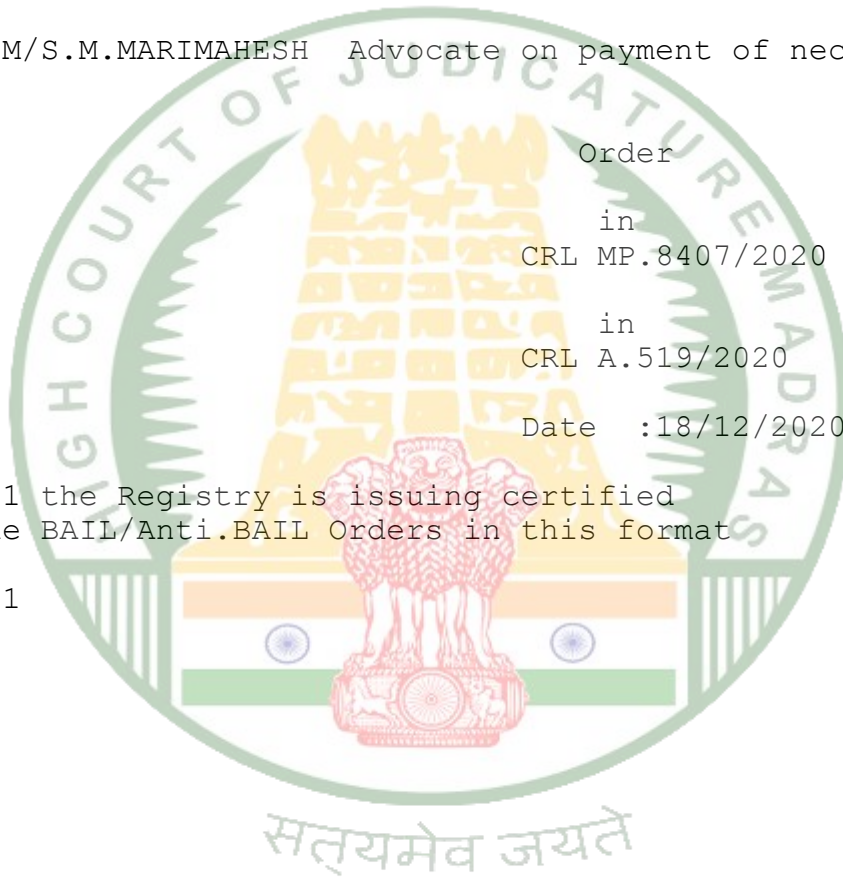
in
CRL MP.8407/2020

in
CRL A.519/2020

Date :18/12/2020

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GKS:04/01/2021



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