

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2020

Coram

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

CRL MP No.17030 of 2019
in Crl.A No. 793 of 2019

1.Sekar
2.Manikandan Petitioners

vs

The State Rep. by
The Inspector of Police,
Cuddalore O.T. Police Station. Respondent

Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence imposed in S.C.No. 100 of 2013 dated 19.10.2019 on the file of I Additional District and Sessions Judge, Cuddalore and enlarge the petitioners on bail pending disposal of the appeal.

For Petitioners .. Mr.S.Velmurugan

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

ORDER

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

The petitioners have been arrayed as A1 and A3 in S.C.No. 100 of 2013 on the file of I Additional District and Sessions Judge, Cuddalore. The trial Court by judgment dated 19.10.2019 convicted the petitioners for the offence punishable under Sections 302 r/w 34, 148 and 341 r/w 34 IPC. For the offence punishable under Section 302 r/w 34 IPC sentenced them to undergo life imprisonment and to pay a fine of Rs.3,000/- each, in default, to undergo six months simple imprisonment, for the offence punishable under Section 148 IPC, sentenced them to undergo one year rigorous imprisonment and to pay a fine of Rs.500/- each, in default, to undergo simple imprisonment for two weeks and for the offence punishable under Section 341 r/w 34 IPC sentenced them to undergo one month simple imprisonment. Seeking to suspend the sentence, the present petition

2. The case of the prosecution is that there was a prior enmity between the accused and the deceased with respect to collection of fees towards the membership of the Association in which both of them were members. The said activity was taken away from the accused and given in favour of the deceased. Enraged over the same, there was a disputer between the parties. On the date of occurrence, when the deceased was travelling in a two-wheeler, the petitioners stopped him and committed the offence.

3. Learned counsel appearing for the petitioners submitted that injury on the first accused has not been explained. The Investigating Officer merely feigned ignorance. A memo of the xerox copy of the document was filed to show that the first petitioner was admitted in the hospital. These aspects have not been considered properly. The petitioners have been under incarceration from 19.10.2018 onwards. Therefore, the sentence will have to be suspended.

4. Learned Additional Public Prosecutor appearing for the State submitted that the occurrence has been witnessed by the eye witnesses. A memo was filed to establish the plea of alibi, which was rejected by the trial Court. The Investigating Officer merely stated that he did not know about the admission of the first accused in the hospital. Thus, the petition will have to be dismissed.

5. Admittedly, the petitioners have been under incarceration for more than one year. If the statement made by the learned counsel appearing for the petitioners is accepted then it would come under Section 304 Part I or Part II IPC, as the case may be. We do find existence of adequate issues involved. Thus, taking into consideration the above coupled with the fact that there are issues to be decided in the appeal, we are inclined to suspend the sentence.

6. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that each of 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 Judicial Magistrate II, Cuddalore and on further condition that the petitioners shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-

23/11/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

TO

1 THE JUDICIAL MAGISTRATE NO.II,
CUDDALORE.

2 THE CHIEF JUDICIAL MAGISTRATE
CUDDALORE [FOR INFORMATION]

3 THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE,
CUDDALORE.

4 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE,
CUDDALORE O.T. POLICE STATION.

+1C.C. to M/S. S.VELMURUGAN Advocate on payment of necessary
charges SR NO.7764

Order

in

CRL.MP.NO.17030/2019

in

CRL.A.NO.793/2019

Date :23/11/2020

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MK:23/11/2020

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