

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.10.2020

Coram

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

CRL MP No. 17615 of 2019
in Crl.A No. 824 of 2019

1.Vediyppan ... Petitioners
2.Kanniyammal

-vs-

State Rep by. ... Respondent
The Inspector of Police,
Sigarapettai Police Station,
Krishnagiri District.

Petition filed under Section 389(1) r/w 439 of Cr.P.C. to suspend the sentence passed in S.C.No.70 of 2019 dated 06.11.2019, on the file of the Additional District and Sessions Judge, Krishnagiri, Krishnagiri District.

For Petitioners : Mr.E.Kannadasan

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 accused 1 and 2 in S.C.No. 70 of 2019 on the file of Additional District and Sessions Judge, Krishnagiri, Krishnagiri District. The trial Court, by judgment dated 06.11.2019 convicted the first petitioner for the offence punishable under Sections 120-B and 302 IPC, convicted the second petitioner for the offence punishable under Sections 120-B, 302 r/w 109 IPC. For the offence punishable under Section 120-B IPC, the petitioners/A1 and A2 are sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/- each, in default, to undergo six months simple imprisonment and for the offence punishable under Section 302 IPC the first petitioner/A1 is sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo six months simple imprisonment, for the offence punishable under Section 302 r/w 109 IPC, the

second petitioner/A2 is sentenced to undergo life imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo six months simple imprisonment and ordered the sentences to run concurrently. Seeking suspension of sentence imposed, the present petition has been filed.

2. The petitioners are the brother and sister having arrayed as A1 and A2. The deceased was the brother-in-law of the first petitioner and thus, the husband of the second petitioner. Even according to the prosecution, the deceased was a drunkard. He used to quarrel with A2, namely the second petitioner who was doing coolie work to maintain herself and her family consisting of four minor children which is inclusive of three girl children. He used to take money from her and use the same for drinking purpose. Additionally, he used to assault the second petitioner.

3. The further case of the prosecution is that due to the harassment caused by the deceased, A2 connived with A1 and committed the offence. Accordingly, A1, namely, the first petitioner, mixed poison in the liquor and administered the same to the deceased.

4. Learned counsel appearing for the petitioners submitted that insofar as the first petitioner/A1 is concerned, he is not pressing the petition for suspension of sentence. Accordingly, insofar as the first petitioner/A1 is concerned, this petition is dismissed as withdrawn.

5. Learned counsel appearing for the petitioners further submitted that except the confession of the first petitioner, who is the co-accused, there is no material to incriminate the second petitioner/A2. Even according to the prosecution, the deceased was harassing the second petitioner/A2. Thus, even assuming the alleged occurrence is true, the offence under Section 302 I.P.C. is not made out as the offence under Section 304 Part I I.P.C. would get attracted. The second petitioner/A2 has been under incarceration for nearly eleven months. She has to take care of the four minor children including three girl children. She is the sole bread winner of the family. Therefore, the suspension of sentence will have to be granted.

6. Mr.K.Prabhakar, the learned Additional Public Prosecutor appearing for the State submitted that the conviction has been rendered placing reliance upon the evidence of P.W.1 before whom the first petitioner/A1 gave the extra judicial confession coupled with the recovery under Section 27 of the Indian Evidence Act, 1872. Thus, this petition requires to be dismissed.

7. Considering the submissions made, we are of the view that there are substantial issues to be considered in the appeal. The second petitioner/A2, is a lady, who has to take care of the four minor children. She is doing coolie work and she is the sole

breadwinner of the family. The fact that the deceased was a drunkard and causing harassment to the second petitioner is not in dispute and the trial Court has also taken note of the aforesaid fact. Thus, considering the above facts, especially the period of incarceration, as aforesaid, we are inclined to suspend the sentence for the second petitioner/A2 alone.

8. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that the second petitioner/A2 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 the District Munsif Court cum Judicial Magistrate, Uthangarai and on further condition that the second petitioner shall report before the concerned Court as and when required.

-sd/-

08/10/2020

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

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

TO

1 THE DISTRICT MUNSIF COURT CUM JUDICIAL
MAGISTRATE, UTHANGARAI.

2 THE CHIEF JUDICIAL MAGISTRATE
KRISHNAGIRI. [FOR INFORMATION]

3 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE,
KRISHNAGIRI.

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
SIGARAPETTAI POLICE STATION,
KRISHNAGIRI DISTRICT.

6 THE SUPERINTENDENT,
SPECIAL PRISON FOR WOMEN, VELLORE.

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

Order

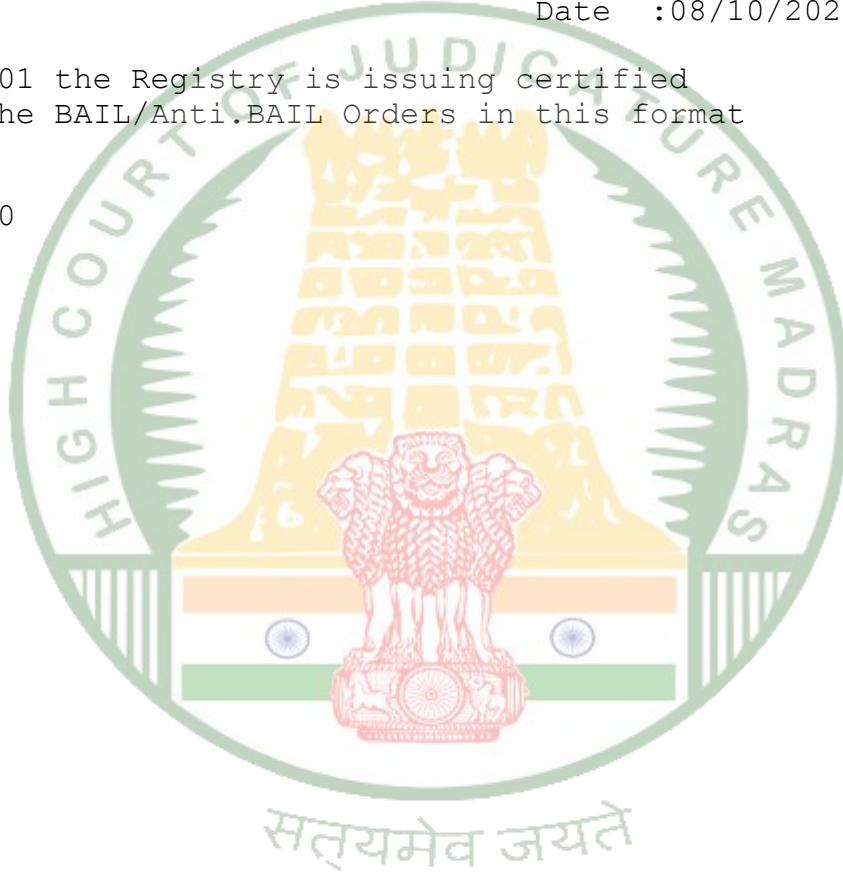
in
CRL MP.17615/2019

in
CRL A.824/2019

Date :08/10/2020

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