

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Eighteenth day of March Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice N. KIRUBAKARAN

and

The Hon`ble Mrs Justice R. HEMALATHA

CRIMINAL MISCELLANEOUS PETITION No.18879 of 2019

IN CRL.A.No.906 OF 2019

SUBHA @ SUBHAKAR

[PETITIONER]

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
POLLACHI WEST POLICE STATION,
POLLACHI, COIMBATORE.
CR.NO.168/2014.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.906 of 2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner by the learned Vth Additional District and Sessions Judge, coimbatore by Judgment dated 28.11.2019 in S.C.No.120/2015.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.No.906 of 2019 on the file of the High Court and upon hearing the arguments of M/S.R.VIVEKANANTHAN, Advocate for the petitioner and of M/S.M.PRABHAVATHI, ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

(Order of the Court was made by R.Hemalatha, J)

The petitioner (A1) was convicted by the learned V Additional District and Sessions Judge, Coimbatore for the offences punishable under Sections 364 & 342 r/w149, 309 of IPC in SC.No.120 of 2015 and was sentenced to undergo 7 years rigorous imprisonment for the offence punishable under Section 364 IPC and to pay a fine of Rs.5,000/- and in default to pay the fine amount, to undergo simple imprisonment for two months. The accused was further sentenced to undergo 1 year rigorous imprisonment for the offence punishable under Section 342 IPC and to pay a fine of Rs.1,000/- and in default to pay the fine amount, to undergo simple imprisonment for one month. The accused was also sentenced to undergo life imprisonment for the offence punishable under Section 302 IPC and to pay a fine of Rs.5,000/- and in default to pay the fine amount, to undergo simple

imprisonment for two months. Aggrieved over the conviction and sentence passed by the learned V Additional District and Sessions Judge, Coimbatore, the accused had filed an appeal in CA.No.906 of 2019 before this Court. Along with the appeal, he has also filed the present Miscellaneous Application praying for suspension of sentence.

2.Heard Mr.R.Vivekananthan, learned counsel appearing on behalf of the petitioner and Mrs.M.Prabhavathi, learned Additional Public Prosecutor.

3.The case of the prosecution is that due to prior enmity between the accused and the deceased, the present accused (A1) along with three others murdered the deceased and gave an extra judicial confession before the Village Administrative Officer who was examined as PW1. Based on the information given by the Village Administrative Officer, First Information Report was registered against the accused and three others and final report was also filed against them. The learned V Additional District and Sessions Judge, Coimbatore after analysing the evidence on record, convicted all the accused and sentenced them as stated above.

4.Mr.R.Vivekananthan, learned counsel appearing on behalf of the petitioner (A1) drew the attention of this Court to the evidence of PW1 and contended that only during investigation, the accused is said to have given extra judicial confession before the Village Administrative Officer and that the entire extra judicial confession was not marked before the trial Court Judge. He would further contend that this is a case of circumstantial evidence and all the witnesses except the Village Administrative Officer, wife and the brother of the deceased turned hostile. It is also revealed from the records that both the wife and brother of the deceased are not eye witnesses to the occurrence and in the facts and circumstances, there are arguable points in the main appeal.

5.Per contra, Mrs.M.Prabhavathi, learned Additional Public Prosecutor contended that the accused on his own volition had given extra judicial confession before the Village Administrative Officer, which was also corroborated by the investigation officer and therefore, the trial Court was right in convicting and sentencing the accused.

6.Considering the arguments advanced on both sides, we are of the considered view that only after the final hearing, it can be concluded whether the trial Court is justified in convicting and sentencing the accused based on the evidence of Village Administrative Officer and the Investigation Officer.

7. Hence, the substantial portion of the sentence imposed by the learned Judge is suspended on the following grounds:

- (i)The accused 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 Judicial Magistrate II, Pollachi.

(ii) The accused should stay at Coimbatore and appear before the learned Judicial Magistrate I, Coimbatore on the first working day of every month and sign until further orders.

-sd/-

18/03/2020

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 JUDICIAL MAGISTRATE, NO. II, POLLACHI
- 2 THE CHIEF JUDICIAL MAGISTRATE
COIMBATORE (FOR INFORMATION)
- 3 THE PUBLIC PROSECUTOR, HIGH COURT, MADRAS.
- 4 THE INSPECTOR OF POLICE,
POLLACHI WEST POLICE STATION,
POLLACHI, COIMBATORE.
- 5 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.
- 6 THE JUDICIAL MAGISTRATE, NO. I, COIMBATORE.
- 7 V ADDITIONAL DISTRICT AND
SESSIONS JUDGE, COIMBATORE.

C.C. to M/S.R.VIVEKANANTHAN Advocate on payment of necessary charges Sr.5305

Order

in

CRL MP.18879/2019

IN CRL.A.No.906 OF 2019

Date :18/03/2020

From 7.2.2001 the Registry is issuing certified copies of the BAIL/Anti.BAIL Orders in this format

RVR 20/03/2020