



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Monday, the Fifth day of October Two Thousand Twenty

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and
The Hon`ble Mrs.Justice T.KRISHNAVALLI

CRL MP(MD) No.4314 of 2020
IN
CRL A(MD) No.103 of 2019

IBRAHIMSHA

... PETITIONER/APPELLANT/ACCUSED NO.1

Vs

STATE REP.BY
THE INSPECTOR OF POLICE,
VILAKKUTHOON POLICE STATION,
IN CRIME NO.56/2014,
MADURAI DISTRICT.

... RESPONDENT/RESPONDENT/COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to Suspend the sentence imposed on the Petitioner/Appellant/Accused in S.C.No.147 of 2015 dated 06/02/2019 on the file of the Learned V Additional District and Sessions Judge, Madurai and enlarge him on bail till pending disposal of the appeal.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of MR.R.PAUL SUKUMAR, Advocate for M/S.M.MURUGESAN, Advocate for the petitioner and of MR.M.CHANDRASEKARAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-



[Order of the Court was made by K.KALYANASUNDARAM, J.]

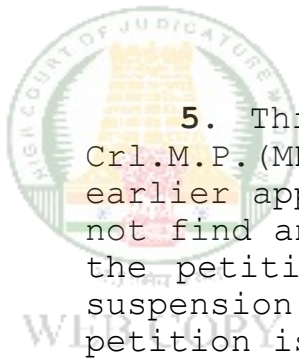
The petitioner along with one Raffiq @ Valakkai Raffiq @ Raffiq Raja and Prakash were tried before the learned V Additional District and Sessions Judge (FAC), Madurai, in S.C.No.147 of 2015, for the offence under Sections 302, 506(ii) r/w 34 I.P.C. It appears that pending trial, Raffiq @ Valakkai Raffiq @ Raffiq Raja (A2) died and the charges framed against him were abated. The Trial Court, vide Judgment dated 06.02.2019, found A1 and A3 guilty for the said offence. The conviction and sentence imposed on the petitioner (A1) is as follows:

Section of Law	Sentence of imprisonment
302 r/w 34 I.P.C.	To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for two (2) months.
506(ii) I.P.C.	To undergo one (1) year rigorous imprisonment.

2. Aggrieved over the conviction and sentence, the petitioner (A1), along with Prakash (A3), has preferred the present criminal appeal. Pending appeal, the petitioner (A1) alone has filed this criminal miscellaneous petition seeking to suspend substantive sentence of imprisonment imposed on him by the Trial Court in the above sessions case.

3. Mr.R.Paul Sukumar, learned counsel appearing for Mr.M.Murugesan, learned counsel on record for the petitioner, would submit that the presence of the eyewitnesses, namely, P.Ws.1, 2, 3 and 16 were not spoken by the other witnesses, namely, P.Ws.6, 9 and 11, which creates suspicion over the presence of the eyewitnesses in the place of occurrence. The learned counsel would further submit that the conviction was also rendered based on the CD footage, but, admittedly, the CD footage was not served on the accused and it was also not sent for expert opinion. The learned counsel relies on the latest decision of the Apex Court rendered on 14.07.2020 in C.A.Nos.20825-20826 of 2017 [**Arjun Panditrao Khotkar vs. Kailash Kushanrao Gorantyal**] in support of his submission that unless a certificate is produced, the electronic evidence is not admissible in law under Section 65-B of the Indian Evidence Act, 1872.

4. Per contra, Mr.M.Chandrasekaran, learned Additional Public Prosecutor, would argue that the points raised by the petitioner were already considered by the earlier Bench and vide order dated 11.07.2019 in CrI.M.P.(MD) No.4691 of 2019, they were rejected and the antecedents of the petitioner were also taken note of by the earlier Bench.



5. This Court has gone through the order dated 11.07.2019 in Crl.M.P.(MD) No.4691 of 2019 in Crl.A(MD) No.103 of 2019. Since the earlier application of the petitioner was dismissed on merits, we do not find any substance in the contentions of the learned counsel for the petitioner. In our view, the petitioner is not entitled for suspension of sentence. Accordingly, the criminal miscellaneous petition is dismissed.

sd/-
05/10/2020

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/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

TO

- 1.THE V ADDITIONAL DISTRICT AND SESSIONS JUDGE,
MADURAI.
- 2.THE INSPECTOR OF POLICE
VILAKKUTHOON POLICE STATION,
MADURAI DISTRICT.
- 3.THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 4.THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.4314 of 2020
IN
CRL A(MD) No.103 of 2019
Date :05/10/2020

KRK
JM/VR/SAR II/09.10.2020/3P/5C