

Reserved on : 16.06.2021

Pronounced on : 06.07.2021

Crl.M.P.Nos.1931 & 708 of 2021
in Crl.A.Nos.74 and 35 of 2021

P. N. PRAKASH , J.
and
R.PONGIAPPAN , J.

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

These criminal miscellaneous petitions have been preferred by the accused seeking to suspend the sentence imposed upon them, by judgment and order dated 18.01.2021 passed in S.C.No.123 of 2016 on the file of the learned Principal District and Sessions Judge, Cuddalore and to enlarge them on bail pending disposal of the appeals.

2. The petitioner in Crl.M.P.No.1931 of 2021 in Crl.A.No.74 of 2021, is arrayed as A5 and the petitioners in Crl.M.P.No.708 of 2021 in Crl.A.No.35 of 2021, are arrayed as A1, A2 and A4, respectively, in the sessions case referred to above. The petitioners/accused were convicted and sentenced by the learned Principal District and Sessions Judge, Cuddalore, as follows:

<i>Accused</i>	<i>Offence</i>	<i>Sentence</i>
A1	302 r/w 34 IPC 147 IPC 341 IPC	Imprisonment for life, with a fine of Rs.1000/- in default to undergo S.I.for one year. R.I. for one year.with fine of Rs.500/- in default to undergo S.I. For one month S.I. for one month.
A2 and A4	302 r/w 34 IPC 302 r/w 201 (2 counts) 147 IPC 341 IPC	Each to undergo Imprisonment for life, with a fine of Rs.1000/- in default to undergo S.I.for one year. Each to undergo R.I. For three years with fine of Rs.100/- in default to undergo S.I. For one month Each to undergo R.I. For one year, with fine of Rs.500/- in default to undergo S.I. For one month Each to undergo S.I. for one month.
A5	302 r/w 34 IPC (2 counts) 147 IPC 341 IPC (2 counts)	Imprisonment for life, with a fine of Rs.1000/- in default to undergo S.I.for one year. R.I. For one year, with fine of Rs.500/- in default to undergo S.I. For one month S.I. for one month.

3. Challenging the above conviction and sentence, the petitioners/accused have filed Crl.A.Nos.74 and 35 of 2021 along with the instant miscellaneous petitions seeking suspension of sentence and bail. As both the petitions arise out of the common judgment, they are taken up together, heard and disposed of, by this common order.

4. Heard Mr.R.C.Paul Kanagaraj, learned counsel appearing for the petitioner/accused in Crl.M.P.No.1931 of 2021, Mr.A.Ramesh, learned senior counsel appearing for the petitioners/accused in Crl.M.P.No.708 of 2021 and

Mr.R.Muniyapparaj, learned Government Advocate (CrI. Side) appearing for the respondent/State.

5. The case of the prosecution is that on 08.05.2005 at about 12.00 hours, all the petitioners herein in furtherance of common intention formed themselves into unlawful assembly near the field of the *de facto* complainant, where the *de facto* complainant's father viz. Kaliyamoorthy and cousin brother were ploughing the field. While at the time of occurrence, A1 covered the face of Kaliyamoorthy with a black shawl and kicked him down and compressed his face in the sand. At that time, A3 sat on top of Kaliyamoorthy and A5 caught hold of his legs to prevent him from moving and caused the death of Kaliyamoorthy. When the deceased Ravichandran came running behind Kaliyamoorthy, A2 covered the face of Ravichandran with another black shawl and kicked him down and compressed his face in the sand. At that time, A4 sat on the top of Ravichandran and A5 caught hold of his legs to prevent him from moving and caused his death. Thus, all the accused committed the offence punishable under Sections 147, 341, 302 r/w 34 (2 counts) of IPC.

6. The learned counsel who appeared on behalf of the petitioners/accused would contend that in respect to the alleged occurrence, initially, a case has been registered under Section 174 Cr.P.C., and thereafter, the same was closed as the petitioners were not involved in the occurrence. Subsequently, due to the intervention of this Court, further investigation was ordered and also the investigation was handed over to the CBCID. Previous to the occurrence, in respect to administering the temple, the petitioners and the deceased are having dispute. During the time of investigation, dead bodies were recovered from the river. The evidence given by the alleged eyewitnesses in respect to the occurrence is having some material contradictions. Further, it is impossible to recover both the dead bodies at a single stretch and therefore, those discrepancies are material in nature, but, without considering the same, the trial Court convicted the petitioner, which is erroneous in law. Therefore, they prayed to allow the petitions seeking suspension of sentence and bail to the petitioners/accused.

7. Now, considering the same, it is true, the points now raised by the learned counsel for the petitioners, need a detailed appraisal at the time of disposing the appeal, especially the evidence of PW2, who is said to have

witnessed the occurrence. Counsel for the petitioners assailed his evidence by picking holes in it. We cannot give a finding on this aspect in a suspension of sentence petition.

8. In otherwise, in respect to suspension of sentence, the submissions made by the learned counsel appearing for the petitioners/accused cannot be helpful. In fact, the trial Court has rendered the judgment only on 18.01.2021. Further, charge under Section 302 IPC (two counts) are framed against these petitioners. Therefore, in the said circumstances, it is necessary to see, the judgment in *Vijayakumar Vs. Narendra and others*, reported in **2002 (9) SCC 364**, wherein the Hon'ble Apex Court has held as follows:

“... in considering the prayer for bail in a case involving serious offences like murder punishable under Section 302 IPC, the Court should consider the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of offence, and the desirability of releasing the accused on bail after they have been convicted for committing serious offence of murder.”

9. Therefore, the legal position is very clear that the power of this Court to suspend the order of conviction, apart from the order of sentence, is not alien to Section 389(1) of the Code, but, its exercise should be limited to

very exceptional cases. Merely because of the reason that the convicted person files an appeal in challenge of the conviction, the Court should not suspend the operation of the order of conviction. The Court has a duty to look at all aspects including the ramifications of keeping such conviction in abeyance. Therefore, we are of the opinion that this is not a fit case to suspend the sentence of imprisonment and grant bail to the petitioners.

10. In the result, this criminal miscellaneous petitions are dismissed. The Registry is directed to call for the records, prepare the typed set of papers immediately and list the main appeals for final hearing in the month of September 2021.

(P.N.P.,J.) (R.P.A.,J.)
06.07.2021

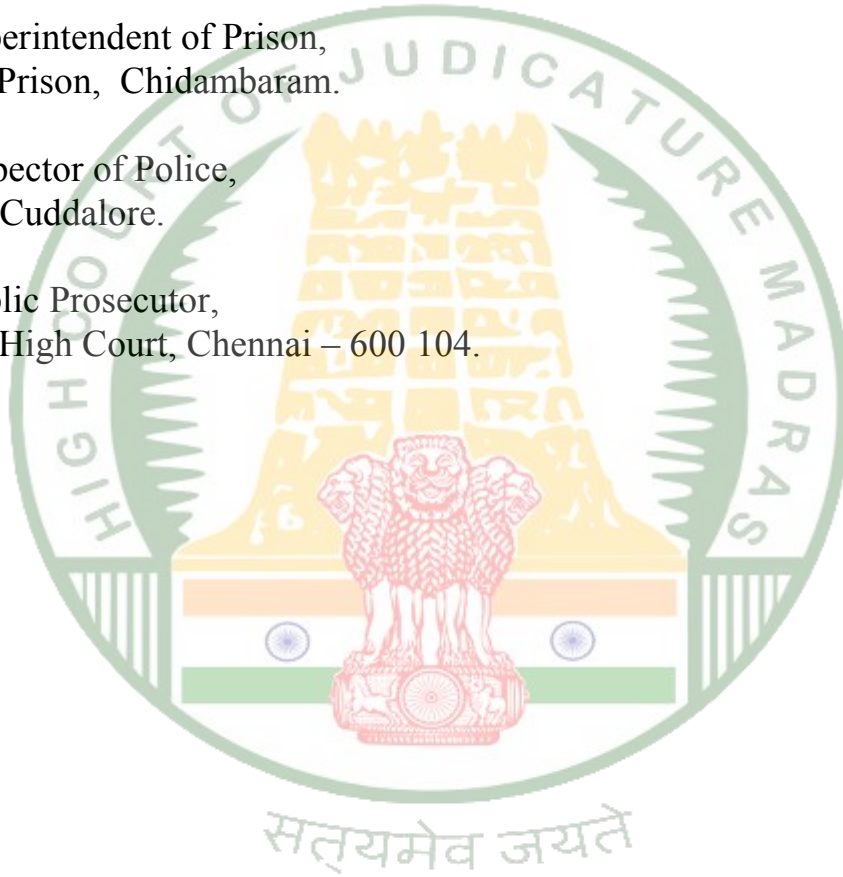
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To

1. The Principal District and Sessions Judge,
Cuddalore.
2. The Superintendent of Prison,
Central Prison, Chidambaram.
3. The Inspector of Police,
CBCID, Cuddalore.
4. The Public Prosecutor,
Madras High Court, Chennai – 600 104.



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