

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Twenty Fourth day of June Two Thousand Twenty One

PRESENT

The Hon`ble Mr Justice P. VELMURUGAN

CRIMINAL MISCELLANEOUS PETITION No.5955 of 2021

IN CRL.A.No.270 of 2021

GOPINATH

[PETITIONER / APPELLANT /
ACCUSED NO.1]

Vs

STATE REPRESENTED BY [RESPONDENT / RESPONDENT /
THE INSPECTOR OF POLICE, COMPLAINANT]
L AND O - D1, TRIPPLICANE POLICE STATION,
CR.NO.973/2014.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Crl.A.No.270/2021 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the Petitioner/Appellant in S.C.No.336/2016, by the learned VI Additional Sessions Judge, Chennai by a judgment dated 22.03.2021 and enlarge the petitioner on bail pending disposal of the above Crl.A.No.270/2021.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl.A.No.270/2021 on the file of the High Court and upon hearing the arguments of M/S.K.R.SAMRATT, Advocate for the Appellant and of M/S. S.SUGENDRAN, Government Advocate (crl.side) on behalf of the Respondent the court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in S.C.No.336 of 2016, dated 22.03.2021, passed by the learned VI Additional Sessions Judge, Chennai.

2. The case of the prosecution is that on 27.06.2014, due to the business disputes, the present petitioner / first accused and the second accused assaulted the victim with hammer on the head with an intention to cause death to the victim and due to which, the victim sustained injuries.

3. Based on the complaint (Ex.P7), a case in Crime No.973 of 2014 was resisted by the respondent-Police against the petitioner/first accused and the second accused for the offence under Section 374 r/e 34 of IPC. After completing investigation, the respondent Police laid a charge sheet before the learned XIII Metropolitan Magistrate, Chennai. The learned Magistrate taken the charge sheet on file in P.R.C.No.101 of 2015. After completing the formalities, since the offences are triable by the Court of Session, he committed the case to the learned Principal Sessions Judge, Chennai.. The learned Principal Sessions Judge, Chennai taken the case on file in S.C.No.336 of 2016 and made over to the learned VI Additional Sessions Judge, Chennai.

4. After considering the evidence on record and hearing on either side, the learned VI Additional Sessions Judge, Chennai, by Judgment dated 22.03.2021 in S.C.No.336 of 2016, convicted the petitioner / first accused and the second accused for the offence under Section 307 r/w 34 of IPC and sentenced them to undergo rigorous imprisonment of 10 years and to pay a fine of Rs.1,00,000/- each, in default to undergo simple imprisonment for one year.

5. Challenging the said Judgment of conviction and sentence, the petitioner / first accused has preferred the appeal along with this Petition, seeking to suspend the sentence.

6. The learned counsel for the petitioner/first accused would submit that there are material contradictions from the evidence of the prosecution witnesses. The occurrence had taken place elsewhere but the accused was wrongly roped into the case. Further, the learned Judge after adverting to the contradicting claims that the assault was by two persons before the Doctor (P.W.6) and the assault was by 3 to 4 persons before another doctor (P.W.7) had chosen to accept the '2 persons' version, assuming that it might have been wrongly stated by one Syed Sahul Ameer (L.W.6) in spite of the fact that Shyed Sahul Ameer (L.W.6) was not at all examined as witness and there is no evidentiary basis to make such an assumption. It is further submitted that as per the medical evidence, the victim had sustained lacerated injuries, and P.W.4, the only circumstantial witness had claimed before the Investigating Officer that P.W.1 was assaulted with knives and had later before the Court contradicted himself that assault was with hammers, and such lacerated injuries, cannot be caused by hammers (M.O.1 and M.O.2), and however, the vital contradiction about the weapon whether it is a hammer or knife, was arbitrarily brushed aside by the learned Sessions Judge. The learned counsel would submit that the learned Sessions Judge failed to consider the material contradictions and mechanically convicted the appellant only on assumptions and on sympathy, and therefore, prays to grant suspension of sentence to the petitioner.

7. The learned Government Advocate (Crl.Side) would strongly object the petition and submitted that due to business dispute, the petitioner / first accused and other accused attacked the victim with hammer with the intention to cause death, and due to which, the victim sustained grievous injuries on the vital part of body, viz., head, however, luckily survive the brutal attack, but lost his left eye and loss of smell. The learned Sessions Judge, on proper appreciation of evidence, rightly convicted the petitioner / accused No.1 for the offence under Section 307 r/w 34 of IPC and sentenced him to undergo ten years rigorous imprisonment, and hence, prays to dismissal of this petition.

8. Heard the learned counsel for the petitioner and the learned Government Advocate (Criminal Side) for the respondent and perused the materials available on record.

9. It is seen from the records that the injured was examined as P.W.1 and he had clearly spoken about the brutal attack made by the petitioner and also weapon used by the petitioner/first accused. The doctor (P.W.6) has also stated that victim had sustained lacerated injury and also opined that the injury would have been caused by the weapons M.O.1 and M.O.2. The doctor (P.W.7) has stated that and on consultation with the neuro surgeon, who gave report saying that the victim had brain haemorrhage and a skull fracture and a multiple facial injuries and he was operated on 28.06.2014 and issued the discharge summary (Ex.P5).

10. There is a substantive overt act attributed against the petitioner and the trial Court, after considering the entire materials, found that the accused / petitioner committed the offence and convicted and sentenced the petitioner. There is no ground made out to grant suspension of sentence to the petitioner.

11. Given the nature and gravity of offence committed by the accused, this Court is not inclined to suspend the sentence. Finding no merits, this miscellaneous petition shall stand dismissed.

-sd/-

24/06/2021

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 VI ADDITIONAL SESSIONS JUDGE,
CHENNAI.

2 THE PRINCIPAL SESSIONS JUDGE,
CHENNAI.

3 THE METROPOLITAN MAGISTRATE,
NO.XIII, EGMORE, CHENNAI.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI-66.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE, L AND O
D1 TRIPLICANE POLICE STATION,

7 THE SECTION OFFICER
CRIMINAL SECTION,
HIGH COURT, MADRAS.

C.C. to M/S.K.R.SAMRATT Advocate on payment of necessary charges

Order

in
CRL MP.5955/2021

in
CRL.A.270/2021

Date :24/06/2021

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