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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.11736 of 2021

Vignesh

... Petitioner/Accused

Versus

State rep.by
Inspector of Police,
Samalpatti Police Station,
Krishnagiri District.
(Crime No.104/2018)

..Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside the order passed by the learned Principal District and Sessions Judge (Vacation Sessions Judge) Krishnagiri, Krishnagiri District in Crl.MP.No.52/2021 in Crl.A.No.3/2021 dt.20.05.2021.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.A.Damodaran,
Government Advocate (Crl. Side)

ORDER

The petitioner has been convicted by the trial Court in SC.No.29/2019, by judgment dt.20.11.2020 and sentenced to undergo 2 years Rigorous Imprisonment and to pay fine of Rs.5,000 for offence under Section 451 of IPC in default three months Simple Imprisonment; five years of Rigorous Imprisonment and to pay a fine of Rs.5,000/- in default 6 months Simple Imprisonment under Section 394 IPC, both the sentence to run concurrently. Thereafter, appeal preferred before the Principal District and Sessions Court, Krishnagiri in Crl.A.No.3/2021 along with a petition in CMP No.52 of 2021 to suspend the sentence under Section 389(1) Cr.PC. The lower



Appellate Court dismissed the said petition on 20.05.2021, against which, the present petition has been filed.

2.The case of the prosecution is that on 30.06.2018 at about 08.00 p.m., when PW.1 (Thangam) was in her house, the petitioner is said to have trespassed into her house and bolted the house inside and beaten her with hammer and caused injury on her left thumb and snatched her 41/2 sovereigns of Thali Saradu and taken away 4 nos. of Kuthu Vilaku. When she raised alarm, the nearby residents surrounded and caught him red handed and thereafter, both the petitioner and PW1 was taken to hospital for treatment. On the complaint lodged by PW1, the respondent registered a case in Crime No.104/2018 for the offences under Section 394 IPC. After completion of investigation, filed a final report for the offences under Sections 451, 394 & 397 IPC. During trial in S.C.No.29/2019, PW-1 to PW-39 were examined and Ex.P-1 to Ex.P-14 were marked and M.O.Nos.1 to 9 were marked and the trial Court convicted the petitioner as stated above.

3.The learned counsel for the petitioner submitted that the petitioner is aged about 19 years and due to personal vengeance, he has been falsely implicated in this case. He further submitted that the Lower Appellate Court had not properly appreciated the evidence on record and dismissed his suspension of sentence, bail petition. In support of this contention, he produced the citation in the case of Virumandi and others .v. The Inspector of Police, Aravakurichi Police Station, Karuru District (Crl.O.P.(MD)No.11033/2010 decided on 08.11.2010) and M/s.Pinnacle Implex and others .v. S.Senthilrajan (Crl.OP.No.19391 of 2020 decided on 06.01.2021).

4.The learned Government Advocate (Crl. Side) appearing for the respondent submitted that the petitioner is in confinement from 20.11.2020 and he had got every right to move 2nd bail application before the lower appellate Court.

5.Finding force in submissions of the learned counsel for petitioner as well as the learned Government Advocate (Crl. Side), there is no res judicata in filing Bail Petition, hence this Court directs the lower Appellate Court to consider the suspension of sentence/bail application of the petitioner on merits and dispose of the same.



6.This criminal original petition is disposed of with the above direction.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Principal District and Sessions Judge
Krishnagiri, Krishnagiri District
2. Inspector of Police,
Samalpatti Police Station,
Krishnagiri District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.E.Kannadasan, Advocate Sr.35468

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kv[co]
srg 27/07/2021