



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	06.10.2021
Pronounced on	29.10.2021

WEB COPY

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH
and
THE HON'BLE Ms. JUSTICE R.N.MANJULA

Crl.M.P.No.9382 of 2021
in
Crl.A.No.190 of 2021

1.M.Selvamoorthy ... Petitioners/Appellants/A1 & A2
2.S.Indira

Versus

The State represented by
The Inspector of Police,
Kallakurichi Police Station,
Kallakurichi District.
Crime No.453 of 2016

... Respondent/Respondent/Complainant

Prayer: Criminal Miscellaneous Petition is filed under Section 389(2) Code of Criminal Procedure, to suspend the sentence imposed on the Petitioners/A1 and A2 in S.C.No.100 of 2017, dated 30.03.2021, on the file of the III Additional Sessions Judge, Villupuram @ Kallakurichi and to enlarge the petitioners on bail.

For Petitioners : Mr. C.Vijayakumar
For Respondent : Mr.R.Muniyapparaj,
Addl. Public Prosecutor (crl.side)

ORDER

R.N.MANJULA, J.

This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the Petitioners / A1 and A2 in S.C.No.100 of 2017, dated 30.03.2021, on the file of the III Additional Sessions Judge, Villupuram @ Kallakurichi and to enlarge the petitioners on bail pending the appeal.

2. According to the case of the prosecution, A1 to A3 had a common intention of murdering the deceased and in furtherance of the said intention; they abused the deceased in filthy language and murdered the deceased by attacking with 'kalakkattu' and hands. After trial, the learned III Additional Sessions Judge, Villupuram @ Kallakurichi found the accused guilty and convicted all the three accused. The charges against the 3rd accused namely Manickam, father

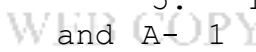


of the 1st appellant, stands abated since he died. The petitioners are husband and wife and they are arrayed as 1st and 2nd accused in this case. After trial, the learned sessions Judge were convicted and sentenced the accused as follows on 30.03.2021:

Rank of the accused	Provision under which convicted	Sentenced the accused
A1	Sec.294(b) IPC Sec.302 IPC	i) To undergo three months simple imprisonment and to pay a fine of Rs.500/-. (ii) in default to undergo three weeks simple Imprisonment. i) To undergo Life imprisonment and to pay a fine of Rs.10,000/-. (ii) in default to undergo three months simple Imprisonment.
A2	Sec.294(b) IPC Sec.323 IPC Sec.302 r/w 34 IPC	i) To undergo three months simple imprisonment and to pay a fine of Rs.500/-. (ii) in default to undergo three weeks simple Imprisonment. (i) To undergo one year simple imprisonment and to pay a fine of Rs.1000/-. (ii) in default to undergo three months simple Imprisonment. i) To undergo Life imprisonment and to pay a fine of Rs.10,000/-. (ii) in default to undergo three months simple Imprisonment.
A3	Sec.294(b), 323 and 302 r/w 34 IPC	charges against A-3 got abated since he died.

The above sentences are ordered to run concurrently.

3. Challenging the above conviction and sentence, the petitioners/ Appellants/Accused 1 and 2 have filed the Criminal Appeal in CrI.A.No.190 of 2021 along with the instant miscellaneous petition seeking for suspension of sentence and to enlarge them on bail.



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6. The learned counsel for the petitioners submitted that the present case is a fabricated one and the petitioners have been falsely implicated. He would further submit that there is every possibility for the petitioners/A1 and A2 to get the present appeal allowed. He has further submitted that the petitioners have two minor children and no one is there to take care of them and hence the sentence should be suspended.

8. On perusal of the records it is seen that, the then learned III Additional Sessions Judge while passing the judgement in this case during the first time acquitted all the accused by giving benefit of doubt. The defacto complainant, who is the son of the deceased, had preferred the appeal against acquittal in CrI.A.No.190 of 2021. In the said appeal, an order was passed to remit the matter to trial Court with a direction to appreciate the evidence afresh. When the matter was remanded, another Judge was holding charge of the 3rd Additional Sessions Court. He considered the evidence afresh and convicted all the three accused. It is the case where two different judgments have been passed and in which contradictory findings and results were rendered.



9. The wife of the deceased also died on the same day on hearing the serious condition of the deceased. However, the fact that two contradictory findings were rendered by two different Sessions judges should also be taken into consideration. The accused are husband and wife and they have got two minor children. The earlier bail application filed by the petitioner was dismissed as withdrawn on 16.06.2021. The petitioners (A1 & A2) have raised substantial grounds in the appeal which require detailed appraisal/consideration. Moreover, the petitioners / A-1 & A-2 are undergoing incarceration for nearly 8 months. Further there is no possibility of hearing the appeal immediately. Under such circumstances, this Court is of the view that the petitioners / A-1 & A-2 are entitled to the relief of suspension of sentence and bail.

10. Accordingly, this Criminal Miscellaneous Petition stands allowed and the sentence of imprisonment is suspended and bail is granted to the petitioners on the following conditions:

- (i) The petitioners (A1 & A2) shall execute a bond for a sum of Rs.25,000/-, each with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned III Additional Sessions Judge, Villupuram @ Kallakurichi.
- (ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank pass Book to ensure their identity; and
- (iii) The petitioners (A1 & A2) shall appear before the respondent/police everyday at 10.30 a.m. for a period of four weeks and thereafter, the petitioners (A1 & A2) shall appear before the trial Court on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if they are not able to appear before the trial Court on any day, they shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of their absence, as directed by the trial Court.

-sd/-

29/10/2021

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.



1 THE III ADDITIONAL SESSIONS COURT,
VILLUPURAM @ KALLAKURICHI.

2 THE INSPECTOR OF POLICE,
KALLAKURICHI POLICE STATION,
KALLAKURICHI DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE.

4 THE SUPERINTENDENT,
CENTRAL PRISON (WOMEN), VELLORE.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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

+1C.C. to M/S C.VIJAYAKUMAR Advocate on payment of necessary
charges SR.NO.12173

Order
in
CRL MP.9382/2021
in
CRL.A.NO.190/2021
Date :29/10/2021

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CSK 12/11/2021