



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Thursday, the Tenth day of June Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and
The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.1580 of 2021
in
CRL A(MD)No.66 of 2019

MUTHUPANDI

... PETITIONER/APELLANT

Vs

THE STATE BY
THE INSPECTOR OF POLICE,
ARUPPUKOTTAI TALUK POLICE STATION,
ARUPPUKOTTAI,
VIRUDHUNAGAR DISTRICT.
CRIME NO.67/2012.

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the sentence imposed on the Petitioner by the Learned Additional District and Sessions Judge, Virudhunagar Distirct in S.C No. 166/2012 dated 22.01.2019 pending disposal of the Criminal Appeal.

Prayer in CRL A(MD)No.66 of 2019:

To call for the records and set aside the order of conviction and sentence passed in S.C.No.166 of 2012 dated 22.01.2019 on the file of the learned Additional District and Sessions Judge, Virudhunagar and allow this appeal and acquit the Appellant/Accused from the charge leveled against the petitioner.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.D.GEETHA, Advocate for the petitioner and of Mr.S.RAVI, Standing Counsel for Government on behalf of the Respondent, the Court made the following order:-

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

This criminal miscellaneous petition has been filed by the petitioner/appellant seeking to suspend the substantive sentence of imprisonment imposed on him by the learned Additional District and



Sessions Judge, Virudhunagar, by judgment dated 22.01.2019 in S.C.No.166 of 2012.

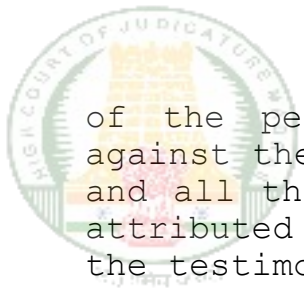
2. The petitioner was arrayed as accused No.1 in S.C.No.166 of 2012 on the file of the Additional District and Sessions Judge, Virudhunagar and he was tried along with one Kalimuthu, S/o.Nachiyappa Thevar, for the offence under Sections 294(b), 302 and 506(ii) of I.P.C.

3. The case of the prosecution is that on 06.03.2012, at 6.00 p.m., the deceased Moorthy was proceeding near Therkupatti Irukankudy, both the accused have waylaid the deceased and demanded money for consuming brandy, when he refused a wordy quarrel arose between them and the second accused pushed him down and thereafter, at the instigation of the second accused, the first accused threw a stone on the head of the deceased and thereby caused his death.

4. To prove the charges against the accused, the prosecution examined P.Ws.1 to 3 as witnesses to the incident and examined other witnesses and marked documents in support of their evidence. After conclusion of the trial, the trial Court found that the charges against the accused have been proved, convicted them and sentenced the petitioner to undergo life imprisonment under Section 302 of I.P.C., with the fine of Rs.5,000/-, which carries the default sentence; two years rigorous imprisonment was imposed for the offence under Section 506(ii) of I.P.C. Both the accused were acquitted for the offence under Section 294(b) of I.P.C. Challenging the said conviction, the first accused has preferred this appeal and the second accused has questioned the finding of the Trial Court in Crl.A.(MD).No.113 of 2019. He was granted suspension of sentence by this Court in Crl.M.P.(MD).No.6304 of 2019, on 03.10.2019.

5. The learned counsel appearing for the petitioner would submit that the prosecution has not proved the charge against the accused beyond reasonable doubt. According to the learned counsel, there are material contradictions in the evidence of P.Ws.1 to 3, who were examined as eye witnesses to the incident and Ex.P1 / complaint. It is further contended that the first accused / the petitioner herein had sustained grievous injuries in the same transaction and the complaint preferred by the first accused / the petitioner herein was not at all registered and no proper investigation was carried out by the prosecution. The origin and genuineness of the case has been deliberately suppressed by the prosecution, therefore, the petitioner is entitled for suspension of sentence.

6. Mr.S.Ravi, learned Standing counsel appearing for the State vehemently opposed the bail petition contending that this is the third application and the earlier application was dismissed, taking note of the fact that the petitioner herein has involved in six



of the petitioner. He further added that to prove the charges against the accused, the prosecution has examined five eye witnesses and all the eye witnesses have categorically deposed the overt act attributed against the accused. The trial Court has rightly accepted the testimonies of P.Ws.1 to 5 and made a conviction on the accused.

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7. In reply, the learned counsel for the petitioner would submit that the petitioner was falsely implicated in seven criminal cases and all the cases have ended in acquittal after trial and the petitioner has been in incarceration for more than two years and hence, the petitioner can be granted bail pending appeal.

8. Heard the learned counsel for the parties and perused the materials available on record.

9. In the case on hand, a criminal case was registered, based on the complaint of P.W.1. In the complaint, it has been specifically stated that both the accused demanded money from the deceased for consuming liquor and when it was refused, the second accused pushed him down and thereafter, the first accused threw a stone on the head of the deceased. In the chief - examination itself, P.W.1 has stated that the second accused threw a stone on the deceased. P.W.2, in the chief - examination has stated that only after the deceased was attacked by A2 with stone, P.W.1 came to the scene of occurrence. So, the evidence of P.W.2 creates doubt about the presence of P.W.1, at the relevant point of time. It is further seen that P.W.15, the Investigation Officer has admitted in the cross - examination that the first accused had sustained injuries and he took treatment in the Government Hospital, Virudhunagar from 06.03.2012 to 14.03.2012. But he did not obtain the accident register and the case sheet to verify as to how he sustained injury in the same transaction. Therefore, we find force in the submission of the learned counsel for the petitioner that the failure on the part of the Investigation Officer to collect records with regard to the injury sustained by the first accused creates a doubt over the prosecution case. It is further seen that the second accused was released on bail by this Court in Crl.M.P.(MD).No.6304 of 2019, on 03.10.2019 and the petitioner is in judicial custody since January 2019.

10. In the light of the above facts, we are inclined to grant suspension of sentence during pendency of the appeal. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment imposed on the petitioner alone is suspended, subject to the following conditions:

- i. The petitioner is directed to be enlarged on bail on executing a bond for Rs.10,000/- (Rupees ten thousand only) with two sureties, of whom, one should be a blood-related surety, each for a like sum to the



satisfaction of the Judicial Magistrate, Aruppukottai.

ii. The petitioner shall appear before the learned Judicial Magistrate, Aruppukottai at 10.30 a.m. on the first working day of every English Calendar month until further orders.

iii. On any particular date, if the petitioners are not able to appear, leave is granted to the petitioners to file an application under Section 317 Cr.P.C. and appear before the Trial Court on any other day, as determined by the Trial Court, in lieu of the day on which they would absent.

sd/-

10/06/2021

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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 ADDITIONAL DISTRICT AND SESSIONS JUDGE,
VIRUDHUNAGAR DISTRICT.
- 2.THE JUDICIAL MAGISTRATE, ARUPPUKOTTAI.
- 3.-DO-THRO'THE CHIEF JUDICIAL MAGISTRATE,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.
- 4.THE SUPERINTENDENT, CENTRAL PRISON,MADURAI.
- 5.THE INSPECTOR OF POLICE,
ARUPPUKOTTAI TALUK POLICE STATION,
ARUPPUKOTTAI, VIRUDHUNAGAR DISTRICT.
6. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.D.GEETHA, Advocate SR.No.3924

ORDER IN

CRL MP(MD) No.1580 of 2021 in

CRL A(MD)No.66 of 2019

Date :10/06/2021

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