



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

Tuesday, the Thirtieth day of March Two Thousand and Twenty One

PRESENT

The Hon`ble Mrs.Justice R.THARANI

**CRL MP(MD) Nos.2773 and 2774 of 2021
in
CRL RC(MD)No.278 of 2021**

PERIYASAMY

... PETITIONER/APPELLANT/ACCUSED (SOLE)
IN BOTH THE PETITIONS

Vs

THE STATE REPRESENTED BY
THE SUB INSPECTOR OF POLICE,
SIVAKASI EAST POLICE STATION,
VIRUDHUNAGAR DISTRICT.
CRIME NO. 634/2011.

... RESPONDENT/RESPONDENT/COMPLAINANT
IN BOTH THE PETITIONS

PRAYER IN CRL MP(MD)No.2773 of 2021 IN CRL RC(MD)No.278 of 2021:

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Enlarge the Petitioner on bail by suspending the sentence imposed by the Learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur in C.A No. 108/2017 dated 20.01.2021 whereby confirming the Judgement and conviction passed by the learned Judicial Magistrate No.II, Sivakasi, Virudhunagar District in C.C.No.41 of 2017 dated 25.07.2017 pending disposal of the main Criminal Revision.

Prayer in CRL MP(MD) . 2774/ 2021 IN CRL RC(MD)No.278 of 2021:

To Exempt the Petitioner from surrendering pursuant to the sentence imposed by the Learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur in C.A No. 108/2017 dated 20.01.2021 whereby confirming the Judgement and conviction passed by the learned Judicial Magistrate No.II, Sivakasi, Virudhunagar District in C.C.No.41 of 2017 dated 25.07.2017 pending disposal of the main Criminal Revision.

Prayer in CRL RC(MD) . 278/ 2021 :

To call for the entire records pertaining to the Judgment and conviction passed by the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur in C.A.No.108 of 2017 dated 20.01.2021 whereby confirming the judgment and conviction passed by the learned Judicial Magistrate No.II, Sivakasi,



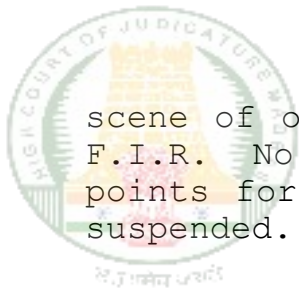
Virudhunagar District in C.C.No.41 of 2017 dated 25.07.2017 and set aside the same and consequently acquit the petitioner honourably.

Order : These petitions coming up for orders on this day, upon perusing the petitions filed in support thereof and upon hearing the arguments of Mr.S.M.ANANTHA MURUGAN, Advocate for the petitioner in both the petitions and of Mrs.S.BHARATHI, Government Advocate(Crl. Side) on behalf of the Respondent in both the petitions, while admitting the Criminal Revision Petition, the Court made the following order:-

These petitions have been filed (i) to suspend the sentence passed in C.C.No.41 of 2017, on the file of the Judicial Magistrate No.II, Sivakasi, Virudhunagar, dated 25.07.2017, as confirmed in Criminal Appeal No.108 of 2017, dated 20.01.2021, on the file of the Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur and (ii) to exempt the petitioner from surrendering before the lower Court.

2.The case against the petitioner is that on 29.08.2011, the petitioner waylaid the defacto complainant and assaulted him and caused grievous injury and threatened him with dire consequences. A case in Crime No.634 of 2011 was registered against the petitioner and the same was taken on file as C.C.No.41 of 2017, on the file of the Judicial Magistrate II, Sivakasi. After trial, the Judicial Magistrate found the petitioner guilty under Sections 341 and 325 I.P.C. The petitioner was sentenced to undergo rigorous imprisonment for a period of one month and to pay a fine of Rs.500/-, in default, to undergo a further period of one week simple imprisonment under Section 341 of I.P.C and the petitioner was sentenced to undergo rigorous imprisonment for a period of one year and to pay a fine of Rs.1,000/-, in default, to undergo a further period of three months simple imprisonment under Section 325 of I.P.C. Against the said conviction and sentence, the petitioner preferred an appeal in Criminal Appeal No.108 of 2017, before the Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur and the learned Judge confirmed the conviction and sentence, on 20.01.2021. Against the same, the petitioner filed the Revision in Crl.R.C.(MD)No.278 of 2021. Along with the revision, the petitioner preferred these petitions (i) for suspension of sentence and (ii) for exempting the petitioner from surrendering.

3.On the side of the petitioner, it is stated that P.W.1 has admitted that there was no default in payment of the subscription for the Cable connection. P.W.2, who is the collecting Agent, has not seen the occurrence. P.W.3 came to the spot only after the occurrence. An Ortho Doctor has given evidence instead of an ENT Specialist and the Ortho Doctor cannot find out whether there was hearing deficiency for the defacto complainant. Nature of the injury was not mentioned in the Accident Register copy. Opinion of a specialist ENT is necessary. P.W.3 was not at all present in the



scene of occurrence. The grievous injury was not mentioned in the F.I.R. No weapon was used by the petitioner and there are much more points for arguments in the revision and prayed the sentence to be suspended.

4. On the side of the prosecution, it is stated that the prosecution has examined nine witnesses [P.W.1 to P.W.9] and marked 6 documents [Ex.P1 to Ex.P6]. The prosecution has proved the case beyond all reasonable doubts. It is further stated that the petitioner is having three previous cases. If the sentence is suspended, there is possibility for the petitioner to abscond and to escape from the clutches of law and prayed the petition to be dismissed.

5. It is seen that the occurrence took place in the year 2011 and the petitioner was convicted on 25.07.2017 and the appeal was dismissed on 20.01.2021. Considering the nature of the offence and considering the fact that there is no likelihood of the revision to be taken up for final hearing in the near future, this Court is inclined to suspend the sentence.

6. Accordingly, Crl.M.P.(MD)No.2773 of 2021 is allowed and the substantive sentence of imprisonment alone is suspended and the petitioner is ordered to be released on bail on the following conditions:-

(i) the petitioner is not exempted from surrendering before the trial Court and the petitioner is directed to surrender before the Judicial Magistrate No.II, Sivakasi, Viruhdunagar, within a period of two weeks from the date of receipt of copy of this order;

(ii) the petitioner is directed to execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties, of whom, one should be a blood relative, for a like sum to the satisfaction of the Judicial Magistrate No.II, Sivakasi, Viruhdunagar;

(iii) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Trial Judge may obtain a copy of any valid identity proof to ensure their identity ;

(iv) the petitioner shall appear before the **respondent police** daily at 10.30 a.m., until further orders.

7. Accordingly, Crl.M.P.(MD)No.2774 of 2021 is dismissed.

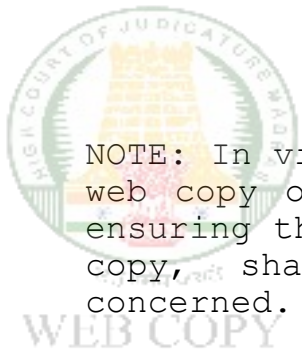
sd/-

30/03/2021

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/ /2021

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 PRINCIPAL DISTRICT AND SEESIONS JUDGE,
VIRUDHUNAGAR AT SRIVILLIPUTHUR.

2.THE JUDICIAL MAGISTRATE NO.II, SIVAKASI.

3.-DO-THRO'THE CHIEF JUDICIAL MAGISTRATE,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.

4.THE SUB INSPECTOR OF POLICE,
SIVAKASI EAST POLICE STATION,
VIRUDHUNAGAR DISTRICT.

5.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to Mr.S.M.ANANTHA MURUGAN, Advocate (SR-2727[I] dated
30/03/2021)

ORDER

IN

CRL MP(MD) Nos.2773 and 2774 of 2021
in

CRL RC(MD)No.278 of 2021

Date :30/03/2021

Ls

AE/JC/ (07/04/2021) 4P / 7C