



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

Tuesday, the Seventh day of December Two Thousand and Twenty One

PRESENT

The Hon`ble Mrs.Justice R.THARANI

Crl.M.P.(MD)Nos.4743 and 4744 of 2021
in
Crl.A(MD) No.289 of 2021

SELVAKUMAR

... PETITIONER/ APPELLANT
IN BOTH THE PETITIONS

Vs

THE STATE REP.BY,
1 THE DEPUTY SUPERINTENDENT OF POLICE,
THIRUPATHOOR, SIVAGANGAI DISTRICT.

2 THE INSPECTOR OF POLICE
KANDAVARAYANPATTI POLICE STATION,
SIVAGANGAI
CRIME NO.103/2013.

... RESPONDENTS/ RESPONDENTS
IN BOTH THE PETITIONS

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Pass an order of Suspend the sentence imposed on the Petitioner vide judgment dated 02.03.2019 made in S.C no. 139/2014 on the file of the Learned Special Judge PCR Court, Sivagangai Pending disposal of the above Criminal Appeal.

Prayer in CRL MP(MD). 4744/ 2021 :

To Pass an order of Exemption from Surrender for exempting the surrender of the Petitioner Pursuant to the conviction order dated 02.03.2019 made in S.C No. 139/2014 on the file of the Learned Special Judge PCR Court Sivagangai Pending disposal of the above criminal appeal.

Prayer in Crl.A(MD) No.289 of 2021:

To call for the records relating to the S.C.No.139 of 2014 on the file of the learned Special Judge, PCR Court, Sivagangai and set aside the conviction and sentence imposed on the appellant by the above court vides its judgments dated 02.03.2019 and acquit the appellant herein.

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.M.S.JEYAKARTHIK, Advocate for the petitioner in both the petitions and of MR.R.SURESH KUMAR, Government Advocate on behalf of the Respondents in both the petitions, the court made the



The case against the petitioner/sole accused is that the petitioner humiliated the defacto complainant by uttering his caste's name, abused him in filthy language and assaulted him with stones. A case in Crime No. 103 of 2013 under Sections 294(b), 324 IPC and Section 3(1)(x) of SC/ST Act, 1989 was registered against the petitioner. The case was taken on file as S.C.No.139 of 2014 on the file of the Special Court for SC/ST (PCR) Act cases, Sivagangai. The Special Court found the petitioner/sole accused guilty and imposed a fine of Rs.1,000/- in default to undergo one month simple imprisonment for the offence under Section 294(b) IPC and imposed a fine of Rs.1,000/- in default to undergo one month rigorous imprisonment for the offence under Section 324 IPC and sentenced him to undergo one year rigorous imprisonment and to pay a fine of Rs.1000/- in default to undergo one month rigorous imprisonment for the offence under Section 3(1)(x) of SC/ST Act.

2. As against the said conviction and sentence, the petitioner/sole accused has preferred an appeal in Crl.A(MD)No.289 of 2021. Along with the appeal, he has filed the present applications (i) for suspension of sentence pending disposal of the said appeal (ii) for exempting the petitioner to surrender before the trial Court.

3. On the side of the petitioner/sole accused, it is stated that fine amount was already paid by the petitioner. All the witnesses are relatives and they are all interested witnesses. P.W.8 Doctor has deposed that there is possibility of the injuries to have caused by falling down in a drunken mood. P.W.8 has further stated that there was smell of liquor from the defacto complainant and the injury is only simple in nature. The Investigation Officer P.W.11 was not authorised by the Superintendent of Police to investigate the matter and permission in writing was not obtained by the Investigation Officer.

4. On the side of the petitioner, a judgment of this Court reported in **2015(2) MWN (Cr.) 628 in Periyasamy and another Vs. State rep. by the Deputy Superintendent of Police, Coimbatore District** is cited, wherein, it has been held that "essential ingredient of Section 3(1)(x) - Investigation though conducted by DSP/PW15, no material to show that he was specifically empowered and authorized to conduct investigation as required by Rule 7(1) - Investigation conducted by P.W.15, therefore, vitiated entire proceedings".

5. On the side of the prosecution, it is stated that prosecution has examined 11 witnesses and marked 12 documents and produced one Material Object. The prosecution proved the case beyond all reasonable doubts. The offence is against the down trodden people and prayed the petition to be dismissed.



6. On the side of the petitioner, it is stated that the petitioner has surrendered before the trial court on 15.11.2021 and he is in custody for the past 3 weeks and prayed the sentence to be suspended.

7. The learned counsel for the petitioner/sole accused has raised substantial points in the memorandum of appeal, which require a detailed consideration by this Court. Considering the fact that the Criminal Appeal is not likely to be taken up for final hearing in the near future, this Court is of the view that the petitioner/sole accused herein is entitled to the relief of suspension of sentence.

8. Accordingly, Crl.M.P.(MD)No.4743 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 directed to execute a bond for a sum of Rs.25,000/- (Rupees twenty five thousand only) with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the Special Judge, PCR Court, Sivagangai.

(ii) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Trial Judge may obtain a copy of their valid identity card to ensure their identity.

(iii) the petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m., until the disposal of the appeal or until further orders.

(iv) If the aforesaid condition is not complied within the prescribed time limit, the order of suspension of sentence stands automatically cancelled.

9. Since the petitioner has already surrendered before the trial court, Crl.M.P.(MD)No. 4744 of 2021 is dismissed as infructuous.

sd/-
07/12/2021

/ TRUE COPY /

/ /2021
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

1 THE SPECIAL JUDGE,
PCR COURT, SIVAGANGAI.

2 THE DEPUTY SUPERINTENDENT OF POLICE,
THIRUPATHOOR, SIVAGANGAI DISTRICT.

3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.

4 THE INSPECTOR OF POLICE
KANDAVARAYANPATTI POLICE STATION,
SIVAGANGAI

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

+1 CC to Mr.M.S.JEYAKARTHICK, Advocate (SR-8935[I] dated 07/12/2021)

ORDER IN

Crl.M.P.(MD)Nos.4743 and 4744 of 2021
in

Crl.A(MD) No.289 of 2021

Date :07/12/2021

cm

MK/PN/SAR.II/10.12.2021/4P/7C