



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

Monday, the Sixteenth day of August Two Thousand and Twenty One

PRESENT

The Hon`ble Mr.Justice V.BHARATHIDASAN
and
The Hon`ble Mrs.Justice J.NISHA BANU

Crl.M.P. (MD) .No.4062 of 2021
in
Crl.A. (MD) .No.218 of 2020

PITCHU MANI @ PITCHAI MANI ... PETITIONER/ACCUSED NO.1

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE,
MUNNEERPALLAM POLICE STATION,
TIRUNELVELI DISTRICT.
CRIME NO.168/2013.

... RESPONDENT/COMPLAINANT

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 I Additional District Sessions Judge, Tirunelveli District in S.C.No.656 of 2016 vide his Judgment dated 04/03/2020 pending the disposal of the main criminal appeal in Crl.A. (MD) .No.218 of 2020 Pending on the file of this Hon`ble Court.

Prayer in Crl.A. (MD) .No.218 of 2020:

To call for the entire records pertaining to the Judgment delivered by the learned I Additional District Sessions Judge, Tirunelveli in S.C.No.656 of 2016 vide Judgment dated 04/03/2020 and set aside the same and consequently acquit the appellants from all the charges mentioned in the said case.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.R.ANAND, Advocate for the petitioner and of MR.S.RAVI, Standing Counsel for State for the respondent, the court made the following order:-

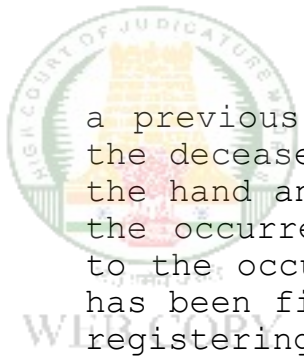
(Order of the Court was made by V.BHARATHIDASAN,J.)

Totally there are two accused in S.C.No.656 of 2016, on the file of the I Additional District Sessions Judge, Tirunelveli. The petitioner is arrayed as A-1 and he was found guilty for the offence

2. The

3. Mr.R.Anand, learned counsel for the petitioner would submit that there are four eye witnesses to the occurrence. Out of which, P.W.3 and P.W.4 turned hostile. P.W.1 and P.W.2 are son and wife of the deceased and they are interested witnesses and based on the testimony of P.W.1 and P.W.2, the trial Court convicted the accused. According to the petitioner, there was no occasion for P.W.1 and P.W.2 to see the occurrence. That apart, the occurrence had taken place in a bar, where a number of number people were present. But, no independent witness was examined. P.W.3, who was said to have helped P.W.1 and 2, for giving complaint, has turned hostile and P.W.4-the salesman of the wine shop has also turned hostile. According to P.W.4, four or five persons came to the wine shop and attacked the deceased. It is not the case of the prosecution that A-1 alone attacked the deceased. Hence, the prosecution suppressed the origin and genesis of the crime. The deceased is a notorious rowdy element and having number of criminal cases and also detained under Act 14 of 1982. He is having so many enemies in that area and without conducting any investigation on this aspect, the trial Court had wrongly convicted the accused. He would further state that in respect of A-2, this Court had already suspended the sentence and pending trial, the petitioner was granted bail.

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a previous motive between the accused and the deceased. Earlier, the deceased attacked the petitioner's father and caused injuries in the hand and a criminal case was also registered and in retaliation, the occurrence had taken place. P.W.1 and P.W.2 were eyewitnesses to the occurrence and immediately after the occurrence, a complaint has been filed before the respondent police and there is no delay in registering the F.I.R. and the name of the accused were found place in the F.I.R. Even though the other eyewitnesses turned hostile, the evidence of P.W.1 and P.W.2, is reliable and trustworthy and believing the evidence of P.W.1 and P.W.2, the trial Court convicted the accused. So far as A-2 is concerned, he was convicted only with the aid of 34 of I.P.C and there is no specific overt act attributed to him. This Court considered the said aspect and suspended the sentence and the petitioner cannot claim parity with A-2 and therefore, he is not entitled for bail.

5. We have considered the rival submissions made and perused the materials available on records.

6. From the perusal of the records, it is seen that P.W.1 and P.W.2, who are son and wife of the deceased are the eyewitnesses to the occurrence. Admittedly, the occurrence had taken place in a public place viz., Tasmac Bar, where number of persons could have been present there. Even though P.W.4 and P.W.5, who were said to have present in the bar, they have turned hostile. That apart, P.W.3, who was said to have taken P.W.1 to the police station for filing F.I.R also turned hostile. As contended by the learned counsel for the petitioner, P.W.5, the person, who was present in the scene of occurrence had stated that four to five persons came to the scene of occurrence and attacked the deceased. This Court has suspended the sentence in respect of A-2, who is a similarly placed person. Considering the above circumstances, we find a *prima facie* case has been made out for grant of suspension of sentence.

7. Considering the above aspects, we are inclined to grant suspension of sentence. 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 a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, each for a like-sum to the satisfaction of the Judicial Magistrate No.V, Tirunelveli.

ii. The petitioner shall appear before the trial Court at 10.30 a.m., on the first day of every English calendar month



until further orders.

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

sd/-
16/08/2021

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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 I ADDITIONAL DISTRICT SESSIONS JUDGE, TIRUNELVELI DISTRICT.
- 2 THE JUDICIAL MAGISTRATE NO.V, TIRUNELVELI.
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.
- 4 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI, TIRUNELVELI DISTRICT.
- 5 THE INSPECTOR OF POLICE,
MUNNEERPALLAM POLICE STATION, TIRUNELVELI DISTRICT.
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
Crl.M.P. (MD) .No.4062 of 2021
in
Crl.A. (MD) .No.218 of 2020
Date :16/08/2021

PM

MK/VR/SAR.I/17.08.2021/4P/7C