



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

Wednesday, the Twenty Eighth day of April Two Thousand and Twenty One

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) No.6486 of 2020
IN
CRL RC(MD) No.652 of 2020

BABU

... PETITIONER/ PETITIONER

Vs

STATE REP.BY
THE SUB-INSPECTOR OF POLICE
KALIYAKKAVILAI POLICE STATION,
KALIYAKKAVILAI, KANNIYAKUMARI DISTRICT.
CRIME NO.245 OF 1988

... RESPONDENT/ RESPONDENT

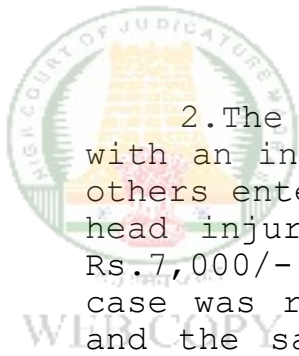
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the sentence imposed by the learned Sessions Court, Kanniyakumari Division at Nagercoil in C.A.No.233 of 2005, dated 24.01.2011 confirming the conviction and sentence passed by the learned Assistant Sessions Court, Kuzhithurai, Kanniyakumar District in S.C.No.151 of 2003 dated 11.08.2005 pending disposal of main Criminal Revision Petition.

PRAYER IN CRL RC(MD) No.652 of 2020

To call for the entire records of the impugned order dated 24.01.2021 in C.A.No.233 of 2005 passed by the learned Sessions Court, Kanniyakumari division at Nagercoil, confirming the order of conviction in S.C.No.151 of 2003, dated 11.08.2005 passed by the learned Assistant Sessions Court, Kuzhithurai, Kanniyakumar District and set aside the same by allowing the revision petition.

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.P.KRISHNASAMY, Advocate for the petitioner and of Mr.S.CHANDRASEKAR, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

This petition has been filed to suspend the sentence imposed by the learned Sessions Judge, Kanyakumari Division, Nagercoil, in C.A.No.233 of 2005 dated 24.01.2011 till the disposal of the revision.



2.The allegation against the petitioner is that on 24.09.1988, with an intention to murder the witness Kamalan, the petitioner and others entered into the house and attacked him with knife and caused head injury and they robbed cash of Rs.. and jewels worth about Rs.7,000/- and caused damage to the door and chairs in the house. A case was registered against the petitioner in Crime No.245 of 1988 and the same was taken on file as S.C.No.151 of 2003 before the learned Sessions Judge, Kuzhithurai, Kanyakumari District. The learned Judge found the petitioner guilty under Sections 459 and 307 of IPC. He was sentenced to undergo five years rigorous imprisonment under Section 459 of IPC. He was sentenced to undergo five years rigorous imprisonment under Section 307 of IPC. Against the said conviction and sentence imposed upon the petitioner, the petitioner has filed an appeal before the learned Sessions Judge, Kanyakumari Division, Nagercoil in C.A.No.233 of 2005. The learned Judge dismissed the appeal. Aggrieved by which, the petitioner has preferred a revision in Crl.R.C.(MD)No.652 of 2020. Along with the revision, he has filed this petition for suspension of sentence.

3.On the side of the petitioner, it is stated that no independent witness was examined by the prosecution. There are contradictions between the evidence of P.W.1 and P.W.2. Both P.W.1, P.W.2 and P.W.5 are interested witness. P.W.4 turned hostile. There is contradiction regarding the author of the complaint. The accused also got injuries. P.W.2 and P.W.3 turned hostile. The FIR is only against two persons. But before the doctor, the patient has stated that he was attacked by three more persons. The petitioner is in custody for the past seven years. There are much more points for consideration in the revision and prayed the sentence imposed upon the petitioner to be suspended.

4.On the side of the respondent, it is stated that the evidence of P.W.1 corroborated the evidence of P.W.8. The accused was known to P.W.1. When stone were pelted on the victim, he closed the door but the accused forcibly open the door and cut off the thumb of the victim and caused injuries. They committed theft of jewels and money. The thumb of the victim was removed. The petitioner was in custody in a murder case. The evidence of injured witness and doctor supported the case of the prosecution. There is possibility for the entire conviction period to have been undergone by the petitioner. The prosecution has examined 10 witnesses and marked 5 documents and proved the case beyond all reasonable doubts and prayed the petition to be dismissed.

5.It is seen that the petitioner is in custody in a murder case undergoing life imprisonment. There is possibility for the petitioner to have completed the entire period of sentence imposed by this Court in this case. This Court has addressed the Superintendent of Prison, Central Prison, Thiruvanthapuram on 19.02.2021. but till today no reply was received from the Superintendent of Prison. There is no use in keeping this petition

