



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Thursday, the Twenty First day of October Two Thousand and Twenty One

WEB COPY

PRESENT

The Hon`ble Mr.Justice V.BHARATHIDASAN
and
The Hon`ble Mrs.Justice S.ANANTHI

Crl.M.P.(MD)No.8211 of 2021
in
Crl.A.(MD).Nos.498 of 2019

MARIAPPAN @ ASHOK ... PETITIONER/ PETITIONER / APPELLANT /
2nd ACCUSED
Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE,
THOOTHUKUDI SOUTH POLICE STATION,
THOOTHUKUDI DISTRICT.
IN CRIME NO.693 OF 2011. ... RESPONDENT/ RESPONDENT / RESPONDENT /
COMPLAINANT

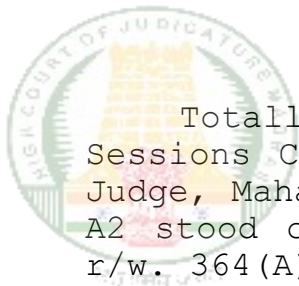
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the Sentence and conviction made in the Judgment in SC.No.233 of 2012 on the file of the Learned Sessions Judge,Mahalir Needimandram, (FTMC),Thoothukudi dated 13.8.2019 pending disposal of the instant Criminal Appeal.

Prayer in Crl.A.(MD).Nos.498 of 2019:

To call for the records in S.C.No.233 of 2012 on the file of the Learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court) Thoothukudi, Thoothukudi District and SET ASIDE the Judgment dated 13.08.2019 and acquit the Appellant of the charges leveled against him.

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.V.MALAIYENDRAN, Advocate for the petitioner and of Mr.S.RAVI, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

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



Totally there are six accused and the petitioner is A2 in Sessions Case No.233 of 2012, on the file of the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thoothukudi. A2 stood charged and tried for the offences under Sections 120(B) r/w. 364(A), 342 and 323 of I.P.C.

2. The trial Court, vide impugned judgment dated 13.08.2019, has convicted the petitioner/A2 for the above said offences and imposed the sentences, thus:

Rank of Accused	Charge	Conviction
Accused No.3	U/s. 120(B) r/w. 364(A) of I.P.C.	To undergo life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo simple imprisonment for a period of six months.
	U/s. 342 of I.P.C.	To pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of three months.
	U/s. 323 of I.P.C.	To pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for a period of three months.

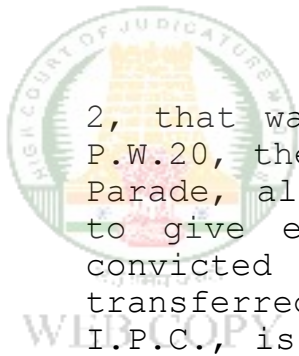
3. Now, challenging the above said conviction and sentence, A2 has preferred this appeal. Pending appeal, he seeks suspension of sentence.

4. The case of the prosecution, in brief, is as follows:

The victim in this case one R.K.Vishal Umash, aged about 4 ½ years at the time of occurrence, is the son of P.Ws.1 and 2. A1 in this case was working as a Driver under them and all the accused conspired together to kidnap the boy for demanding ransom. In furtherance of the same, on 17.08.2011, A1 took the boy to the School, all the accused joined him, kidnapped the boy, kept in an isolated place for two days and demanded Rs.5 crores. Immediately, P.Ws.1 and 2 informed the police, crime was registered and the investigation commenced, after coming to know about the same, all the accused freed the boy and escaped. Thereafter, all the accused were arrested and the trial Court has convicted all the accused as mentioned above.

5. Heard Mr.V.Malaiyendran, learned counsel appearing for the petitioner / A2 and Mr.S.Ravi, the learned Additional Public Prosecutor appearing for the respondent State and perused the materials available on records.

6. The learned counsel appearing for the petitioner/Accused, would submit that P.W.3, the victim boy, was less than five years old at the time of occurrence and he has been tutored by P.Ws.1 and



2, that was admitted by him in his cross examination. That apart, P.W.20, the Judicial Magistrate, who conducted a Test Identification Parade, also has recorded that the victim, P.W.3, is not competent to give evidence. Based on his evidence, the accused has been convicted by the trial Court. Admittedly, no amount has been transferred to the accused and the offence under Section 364(A) I.P.C., is not made out. However, without considering the same, the trial Court has convicted the petitioner. The learned counsel further submitted that this Court has already granted the relief of suspension of sentence to the co-accused viz., A5 and A6 in Crl.M.P. (MD).Nos.8444 and 8561 of 2019, dated 24.11.2019.

7. Mr.S.Ravi, learned Additional Public Prosecutor vehemently contended that it is a case of kidnapping and demanding ransom. A1 is the driver of P.Ws.1 and 2 and with his help, all the accused have kidnapped the victim boy, P.W.3, and kept him in an isolated place, demanding ransom and assaulted him. After the investigation commenced, they freed the boy. Considering the gravity of the offence, the trial Court has rightly convicted the accused and the petitioner is not entitled for suspension of sentence.

8. From the perusal of the records, it could be seen that mainly based on the evidence of P.W.3, the victim boy, who is aged about 4 ½ years old at the time of occurrence, the trial Court has convicted the accused. However, as pointed out by the learned counsel that the learned Judicial Magistrate, who has conducted Test Identification Parade, has recorded that the boy was not fit to give evidence. We find some arguable points involved in the appeal, the petitioner/accused is in jail for more than two years. Now, it is stated that similarly placed accused viz., A3 to A6 were granted the relief of suspension of sentence by this court.

9. Considering the above facts, we are of the opinion that the petitioner has made out a *prima facie* case for grant of suspension of sentence, during the 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 a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties, each for a like-sum to the satisfaction of the learned Judicial Magistrate No.1, Thoothukudi.

ii. The petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m., until further orders.

iii. On any particular date, if the petitioner is unable to appear, leave is granted to the



petitioner to file an application under Section 317 of 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.

WEB COPY

sd/-
21/10/2021

/ TRUE COPY /

/ /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 SESSIONS JUDGE,
MAHALIR NEETHIMANDRAM (FAST TRACK MAHILA COURT),
THOOTHUKUDI.

2 THE JUDICIAL MAGISTRATE NO.I,
THOOTHUKUDI.

3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
THOOTHUKUDI DISTRICT.

4 THE INSPECTOR OF POLICE
THOOTHUKUDI SOUTH POLICE STATION
THOOTHUKUDI DISTRICT.

5 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.

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

ORDER
IN
Crl.M.P. (MD)No.8211 of 2021
in
Crl.A. (MD) .Nos.498 of 2019
Date :21/10/2021

MPK

<https://hmcjceis.gov.in/T/2021/4P/7C>