



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

Wednesday, the Seventeenth day of February Two Thousand and Twenty One

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PRESENT

The Hon`ble Mr.Justice K.KALYANASUNDARAM
and
The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.7406 of 2020
IN
CRL A(MD) No.132 of 2020

VINOTH

... PETITIONER/APPELLANT/
ACCUSED No.2

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE,
EAST POLICE STATION,
KUMBAKONAM, THANJAVUR DISTRICT.
CRIME NO.122 OF 2017

... 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 imposed against the petitioner in S.C.No.129 of 2017 dated 11.2.2020 on the file of the Learned the Additional District and Sessions Judge Cum Special Court Under the EC Act Cases, Thanjavur and enlarge the Petitioner on bail pending disposal of appeal.

PRAYER IN CRL A(MD) No.132 of 2020:

Pleased to call for the records relating to the judgment in S.C.No.129/2017 dated 11.02.2020 on the file of the Additional District and Sessions Judge Cum Special Court Under the EC Act Cases, Thanjavur and set aside the same and allow this Criminal Appeal.

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.M.SUBASH BABU, Advocate for Mr.R.MAHESWARAN, Advocate for the petitioner and of Mr.R.ANANDARAJ, Additional Public Prosecutor on behalf of the Respondent, the court made the following



[Order of the Court was made by K.KALYANASUNDARAM, J.]

The petitioner herein and his brother Satheesh @ Sullan Satheesh were tried by the Additional District and Sessions Court/Special Court under EC Act Cases, Thanjavur in S.C.No.129 of 2019 for commission of murder of one Vickram on 14.04.2017.

2.Though both were charged for the offence punishable under Sections 324 and 302 of IPC, A2 was convicted under Section 302 of IPC and sentenced to undergo Life Imprisonment with fine of Rs.5,000/- in default to suffer one year Rigorous Imprisonment. It is stated that pending trial, the first accused died and charges against him abated.

3. The case of the prosecution is that the deceased and the accused were doing finance. The deceased lent a sum of Rs.3,50,000/- to one Nowshath Ali. While so, the first accused Satheesh alias Sullan Satheesh is said to have purchased the property of said Nowshath Ali agreeing to settle the loan amount to the deceased. It is also the case of the prosecution that the appellant had lent money to one Suresh and the deceased was insisting the Suresh to repay the amount to him and not to the appellant. While so, on 14.04.2017 at 14.30 hours, the deceased called the accused and scolded them, due to which, a wordy quarrel arose between them. Further, on the same day, at 5.00 p.m., the first accused called the deceased over phone and challenged him to come his place and ask the money. In pursuance thereof, the deceased along with PW1 went to the occurrence place, where they were assaulted by the accused and caused death of the deceased.

4. In order to prove the charges, the prosecution examined P.Ws.1,5 & 6, as eye witnesses to the occurrence. Though P.W.1 and P.W.6 did not support the case of the prosecution, the trial Court believing the other evidence adduced by the prosecution, convicted the appellant and sentenced to him as stated supra. Challenging the conviction and sentence, A2 in that case, has preferred this appeal. Pending appeal, this application to suspend the sentence of imprisonment has been filed.

5. Mr.M.Subash Babu, learned counsel appearing for the petitioner would argue that the entire prosecution case is false and the accused have been falsely implicated in this case. According to the learned counsel, the prosecution cited P.Ws.1,5 and 6 as eye witnesses, among them, P.W.1 and P.W.6 have turned hostile. P.W.5 in his cross-examination has admitted that he did not see the occurrence and he came to know about the incident from other persons. It is also contended that the learned Judicial Magistrate, who was examined as P.W.14 did not follow the procedure, while



recording statement of the witnesses and there is no recovery from the petitioner herein and the recovery from A1 is unbelievable. So, the petitioner is entitled for suspension of sentence.

6. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor appearing for the state would argue that P.W.1 is an injured witness and when he took the deceased to P.W.15, has categorically stated that the deceased was attacked by two known persons. P.W.5 in his chief-examination has narrated the incident. The medical evidence also supports the case of the prosecution, therefore, this petition deserves to be rejected.

7. In the matter on hand, it is seen that the prosecution cited P.W.1, P.W.5 & P.W.6 as eye witnesses to the occurrence. The evidence of P.W.17 would show that P.W.1 sustained simple injury, but during trial, he did not support the case of the prosecution. P.W.5 in his cross-examination stated that when he saw the deceased, the accused were not available in the scene of occurrence and he came to know about the accused only after enquiring from other persons. P.W.9- Village Administrative Officer, deposed that the first accused appeared before him on 17.04.2017 and gave Extra Judicial Confession, based on that, recovery was made near a bridge. But in the cross-examination, he has stated that the recovery mahazar was prepared and signature was made in the police station.

8. In the light of the above facts, we are inclined to grant an order in favour of the petitioner. 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 Rs.10,000/- (Rupees ten thousand only) with two sureties, of whom, one should be a blood-related surety, each for a like sum to the satisfaction of the learned Additional District and Sessions Court/Special Court under EC Act Cases, Thanjavur.

ii. The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Trial Court may obtain a copy of their Aadhar card or Bank pass book to ensure their identity.

iii. The petitioner shall stay at Ramanathapuram and report before the Judicial Magistrate No.II, Ramanathapuram, on all working day at 10.30 a.m., until further orders.

iv. On any particular date, if the petitioner is not able to appear, leave is granted to the petitioner on application under Section 317 Cr.P.C. and



appear before the said Court on any other day, as determined by the concerned Court, in lieu of the day on which they would absent.

sd/-
17/02/2021

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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 ADDITIONAL DISTRICT AND SESSIONS JUDGE
CUM SPECIAL COURT UNDER THE EC ACT CASES,
THANJAVUR.
 2. THE JUDICIAL MAGISTRATE No. II,
RAMANATHAPURAM.
 3. DO THROUGH THE CHIEF JUDICIAL MAGISTRATE,
RAMANATHAPURAM DISTRICT.
 4. THE INSPECTOR OF POLICE,
EAST POLICE STATION,
KUMBAKONAM, THANJAVUR DISTRICT.
 5. THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY.
 6. THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. C.C. to Mr.R.MAHESWARAN Advocate SR.No.1135

ORDER
IN
CRL MP(MD) No.7406 of 2020
IN
CRL A(MD) No.132 of 2020
Date :17/02/2021

AM
TK/PN/SAR.1/19.02.2021/4P/8C