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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2022

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THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Crl.R.C.No.454 of 2022

Raj @ Surendar

... Revision Petitioner/A2

Vs.

State Rep. By
The Inspector of Police,
Paramathi Police Station,
Namakkal District.
(Crime No.157 of 2021)

... Respondent/Complainant

Criminal Revision Case filed under Section 397 r/w 401 of the Code of Criminal Procedure, against the order dated 22.12.2021 made in Cr.M.P.No.278 of 2021 in C.A.No.113 of 2021, on the file of the learned Sessions Judge, Special Court for trial of cases Registered under SC/ST (PoA) Act, Namakkal.

For Revision Petitioner : Mr.S.Suresh

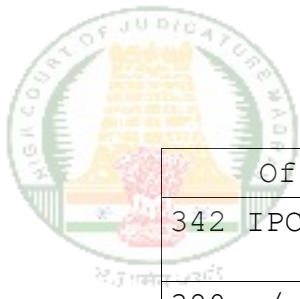
For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision Case has been filed to set aside the order dated 22.12.2021, passed in Cr.M.P.No.278 of 2021 in C.A.No.113 of 2021, on the file of the learned Sessions Judge, Special Court for trial of cases Registered under SC/ST (PoA) Act, Namakkal.

2. The petitioner Raj @ Surender is arrayed as Accused No.2 in C.C.No.8 of 2021 on the file of the Judicial Magistrate Court, Paramathi. The learned Judicial Magistrate, Paramathi, by judgment dated 31.03.2021 found the petitioner/A2 guilty under Sections 458, 342 and 380 r/w 34 of IPC, convicted and sentenced him as follows:

Offence	Sentence
458 IPC	To undergo rigorous imprisonment for three years.



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Offence	Sentence
342 IPC	To pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three months.
380 r/w 34 IPC	To undergo rigorous imprisonment for three years.
The trial Court also ordered the sentences to run concurrently.	

3. Challenging the same, the petitioner preferred an appeal in C.A.No.113 of 2021 on the file of the learned Sessions Judge, Special Court for Trial of Cases registered under SC/ST (PoA) Act, Namakkal, along with Criminal Miscellaneous Petition in CrI.M.P.No.278 of 2021, for suspending the sentence imposed by the learned Judicial Magistrate, Paramathi.

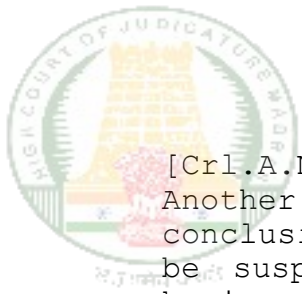
4. The learned Sessions Judge, Special Court for Trial of Cases registered under SC/ST (PoA) Act, by order dated 22.12.2021, dismissed the Criminal Miscellaneous Petition filed by the revision petitioner and refused to suspend the sentence imposed upon him. Challenging the order of refusal the petitioner is before this Court with this Criminal Revision Case.

5. Heard Mr.S.Suresh, learned counsel appearing on behalf of the revision petitioner and Mr.Leonard Arul Joseph Selvam, learned Government Advocate (CrI.Side) appearing on behalf of the State and perused the materials available on record.

6. Now, on going through the evidence given by PW1-Ganesan before the trial Court, it seems that while at the time of occurrence the revision petitioner and two others after showing iron rod and also after attacking the Watchman, opened the temple and had stolen away the case properties. Later, the same was recovered by the respondent police in the presence of PW5-Murugesan.

7. The evidence given by the other witnesses coupled with the evidence of PW1 and PW5, would clearly narrate the fact that the petitioner and others had stolen away the temple properties. In this regard, the first appellate Court after considering the gravity of the offence committed by the revision petitioner refused to suspend the sentence imposed upon him.

8. It is the settled law that there is a difference between grant of bail and grant of suspension of sentence. While at the time of granting bail, we would consider the presumption of innocence. On the other hand, at the time of suspending the sentence, the presumption does not arise. The first appellate Court by relying on the judgments of our Hon'ble Apex Court in Preet Pal Singh Vs. The State of Uttar Pradesh and Another



[CrI.A.No.520 of 2020] and Somesh Chaurasia Vs. State of M.P. & Another [CrI.A.No.590-591 of 2021], has come to the correct conclusion that the sentence imposed by the trial Court cannot be suspended. More than that, the revision petitioner is having five previous cases. Accordingly, in all, this Court is not inclined to entertain this Criminal Revision Case and the same is dismissed. However, considering the facts and circumstances, it would be appropriate to direct the first appellate Court to dispose of the appeal, within a specific period.

9. Accordingly, the first appellate Court viz., the learned Sessions Judge, Special Court for Trial of Cases registered under SC/ST (PoA) Act, Namakkal, is directed to dispose of the appeal in C.A.No.113 of 2021, within a period of three months from the date of receipt of a copy of this order.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Sessions Judge,
Special Court for Trial of Cases
registered under SC/ST (POA) Act,
Namakkal.
2. The Inspector of Police,
Paramathi Police Station,
Namakkal District.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Suresh, Advocate, S.R.No.30036

CrI.R.C.No.454 of 2022

AK-II(CO)
CT 06/05/2022