



CrI.M.P.No.11080 of 2022
in CrI.A.No.427 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.09.2022

PRONOUNCED ON: 20.10.2022

CORAM

THE HONOURABLE MR. JUSTICE **P.N.PRAKASH**

AND

THE HONOURABLE MR. JUSTICE **RMT.TEEKAA RAMAN**

CrI.M.P.No.11080 of 2022

in

CrI.A.No.427 of 2020

1. Ganesan
2. Arumugam

.. Petitioners/A2 & A4

Vs.

State through its
The Inspector of Police,
Singarapettai Police Station,
Krishnagiri District.
(Crime No.115 of 2013)

.. Respondent/Complainant

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C. to suspend the sentence imposed upon the petitioners in S.C.No.118 of 2014 dated 16.10.2020, on the file of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri.

For Petitioners : Mr.R.Sankarasubbu

For Respondent : Mr.R.Muniyapparaj
Additional Public Prosecutor



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ORDER

RMT.TEEKAA RAMAN, J.

This is the 5th petition for suspension of sentence.

2. Convicted accused viz., A2 and A4 are the appellants in the appeal viz., Crl.A.No.427 of 2020 and they seek suspension of sentence.

3. The above appeal is filed against the order of conviction and sentence imposed in S.C.No.118 of 2014, dated 16.10.2020 on the file of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, convicting the appellants/accused 2 and 4 under Section 120-B read with 302 of IPC. Accordingly for the offence under Section 120-B of IPC, both the appellants/accused 2 and 4, were sentenced to undergo life imprisonment and to pay fine of Rs.2,000/- in default to undergo RI for four months. Further, for the offence under Section 302 of IPC, the appellants/accused 2 and 4, were sentenced to undergo life imprisonment and to pay fine of Rs.2,000/- in default to undergo RI for four months. The sentences were directed to run concurrently.



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4. Pending appeal, the appellants/accused 2 and 4, have sought for suspension of sentence in Crl.M.P.No.11080 of 2022.

5. The case of the prosecution is that the petitioners herein along with original accused A1 and A3 hatched a criminal conspiracy to murder the deceased Jayakodi towards securing the compensation money awarded for acquiring the land of her deceased husband. The first accused is the sister-in-law of deceased Jayakodi, third accused is her husband and accused 2 and 4 are sons of accused 1 and 3. The husband of the deceased has passed away earlier. Murder of Jayakodi gave rise to registration of the case. Pursuant to investigation, charge sheet has been filed against four accused under Sections 120-B and 302 r/w 109 IPC.

6. Pending trial, the original accused A1 and A3 filed discharge petition in Crl.M.P.No.62 of 2015 under Section 227 of Cr.P.C., and the same was dismissed by the learned Sessions Judge, Krishnagiri. Aggrieved against the same, they preferred Crl.R.C.No.1042 of 2015 before this Court. By order dated 29.01.2016, this Court appears to have allowed the revision whereby the original accused A1 and A3 were discharged from the Sessions Case. Consequently, A2 and A4 had underwent the trial. During trial, the



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prosecution has examined PW1 to PW19 and marked Ex.P1 to Ex.P30, besides M.O.1 to M.O.14. On the side of the defence, no one was examined.

7. After completion of trial, the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, convicted the accused and sentenced them as stated supra. Hence, the appeal.

8. The learned counsel for the petitioners/appellants would contend that the evidence of PW1 and PW4 being the relatives of the deceased, the trial Court ought to have held that they are interested witnesses and ought to have not relied upon the same. He further submitted that merely based upon the confession of one of the accused, the other accused cannot be convicted.

9. Heard the learned Additional Public Prosecutor appearing for the respondent police.

10. After hearing the rival submissions and going through the records, we find that the records reveals that the earlier suspension of sentence in Crl.M.P.No.6541 of 2020 was dismissed as withdrawn on 27.11.2020. The second suspension of sentence petition in Crl.M.P.No.1136 of 2021, was



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dismissed on 17.03.2021. The third petition for suspension of sentence in Crl.M.P.No.5688 of 2021 was dismissed as withdrawn on 06.05.2021. Then the fourth suspension of sentence petition in Crl.M.P.No.9800 of 2021 was dismissed on 28.10.2021. Further, as per the Court orders, it appears that the petitioners/appellants were granted interim bail for a short time and was extended upto 19 days and subsequently, they surrendered before the trial Court and they are in custody now.

11. After going through the private prosecution evidence of the PW2 and PW3, we find that the deceased Jayakodi, is the sole legal heir of her deceased husband Settu, as per Ex.P2-Legal Heirship Certificate and there was a land acquisition proceedings for the acquisition of the land in patta No.71, in respect of the said land of the Settu, wherein, 3990 sq.ft of the land were acquired by the National Highways Authority. Compensation has to be deposited and has to be paid to the legal heirs and hence, during the legal heir proceedings, the alleged second wife of the deceased Settu, PW10-Santha has given 'No Objection' and the accused have raised a rival claim and however revenue authority PW2 has issued the legal heir certificate to the deceased Jayakodi, as she is the sole legal representative of the deceased Settu.



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12. On 09.04.2013, the legal heirship certificate was issued and within 10 days, the Jayakodi had died due to the homicidal violence. The total extent owned by the Settu, the husband of the deceased is 1½ acres. There was a legal heir dispute. The legal heir certificate was issued to the deceased. PW10 had deposed regarding the previous enmity between the accused in getting the compensation amount and also to take the property from the clutches of the deceased. Though PW2, PW3 and PW10 are the relative witnesses, their version regarding the previous enmity and happenings in the house of the deceased regarding claiming of compensation for the land acquired by the National Highways Authority, cannot be brushed aside. Taking note of the evidence of Doctor i.e. PW9-Dr.Kalaiarasan, who had issued Ex.P6-Postmortem Certificate, also found to be in support of the prosecution.

13. The next contention of the counsel for the petitioners/appellants is that confession statement cannot be the sole basis for conviction. We have given our anxious consideration for the said submission made by him. Based upon the admissible portion of the confession statement of these accused, certain recoveries have been made by the investigation officer, whereby,



nexus between these petitioners/appellants and the crime has been established by the trial Court as per the finding of the trial Court. Hence, the other contentions are to be agitated during the course of the trial. Further, after the dismissal of the previous bail applications, we do not find any change of circumstances to grant suspension of sentence. Therefore, we are not inclined to grant the relief.

14. At this juncture, it is pertinent to point out that the Supreme Court, in ***Sidhartha Vashisht @ Manu Sharma Vs. State (NCT of Delhi)*** has considered ***Kashmira Singh V.State of Punjab [(2008) 5 SCC 230]***, and has held as follows:-

“30. ... In the above cases, it has been observed that once a person has been convicted, normally, an appellate court will proceed on the basis that such person is guilty. It is no doubt true that even thereafter, it is open to the appellate court to suspend the sentence in a given case by recording reasons. But it is well settled, as observed in Vijay Kumar [(2002) 9 SCC 364 : 2003 SCC (Cri) 1195 : JT 2002 Supp (1) SC 60] that in considering the prayer for bail in a case involving a serious offence like murder punishable under Section 302 IPC, the Court should consider all the relevant factors like the nature of accusation made against the accused, the manner in which the crime is alleged to have been committed, the gravity of the offence, the desirability of releasing the accused on bail after he has been convicted for committing serious offence of murder, etc. It has also been observed in some of the cases that normal practice in such cases.



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is not to suspend the sentence and it is only in exceptional cases that
the benefit of suspension of sentence can be granted.”

(emphasis supplied)

15. Accordingly, Crl.M.P.No.11080 of 2022 is dismissed.

16. We observe that the finding rendered by us is limited only for the purpose of disposal of this Criminal Miscellaneous Petition and we are not expressing any opinion on the main appeal.

17. Registry is directed to prepare the typed set of papers and post the appeal for final disposal during the third week of January 2023.

(P.N.P.,J.) (T.K.R.,J.)
20.10.2022

ars

To

1. The Sessions Judge,
Fast Track Mahila Court, Krishnagiri
2. The Public Prosecutor,
Madras High Court, Chennai – 600 104.



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Pre-delivery order made in
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20.10.2022