



WEB COPY



Crl.M.P.No.11524 of 2022 ...
Crl.A.No.547 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.09.2022

PRONOUNCED ON:18.10.2022

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

AND

THE HONOURABLE MR. JUSTICE RMT.TEEKAA RAMAN

Crl.M.P.No.11524 of 2022

in

Crl.A.No.547 of 2020

Manoharan Mohana

.. Petitioner/Second Appellant

Vs.

State by: Inspector of Police,
B15 Rathinapuri Police Station,
Cr.No.2652 of 2011 and
Podanur Police Station
Cr.No.1303 of 2013
Coimbatore.

.. Respondent/Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 381(1) of Cr.P.C. to suspend the sentence imposed upon the petitioner in S.C.No.312 of 2015 on the file of the V Additional District Judge, Coimbatore by judgment dated 30.11.2020, while convicting the petitioner and enlarge the petitioner on bail pending disposal of the above Crl.A.No.547 of 2020.

For Petitioner : Mr.R.Radha Pandian

For Respondent : Mr.M.Babu Muthumeeran
Additional Public Prosecutor



Crl.M.P.No.11524 of 2022 ...
Crl.A.No.547 of 2020

ORDER

RMT.TEEKAA RAMAN, J.,

The convicted second accused is the petitioner herein. This is the second suspension of sentence petition.

2. This Criminal Miscellaneous Petition has been filed seeking to suspend the sentence imposed on the petitioner by judgment and order dated 30.11.2020 passed in S.C.No.312 of 2015 on the file of the V Additional District Judge, Coimbatore, and to enlarge the petitioner on bail pending disposal of the appeal.

3. The petitioner is the accused No.2 in S.C.No.312 of 2015 before the V Additional District and Sessions Judge, Coimbatore, and was convicted and sentenced as follows:-

<i>S. No.</i>	<i>Rank of the accused</i>	<i>Conviction</i>	<i>Sentence</i>
1.	A2	U/s.120(B) IPC	Imprisonment for life and to pay a fine of Rs.25,000/- in default, to undergo simple imprisonment for two months.
		U/s.302 r/w.109 IPC	Imprisonment for life and to pay a fine of Rs.25,000/- in default, to undergo simple imprisonment for two months.
		U/s.420 IPC r/w.109 IPC	Seven years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for one month.



Crl.M.P.No.11524 of 2022 ...
Crl.A.No.547 of 2020

WEB COPY

4. The learned District and Sessions Judge, further directed that the sentence shall run concurrently and the sentence already undergone shall be set off under Section 428 Cr.P.C. Challenging the same, the petitioner has filed Crl.A.No.547 of 2020 with the present petition for suspension of sentence and bail.

5. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor.

6. The case of the prosecution is that E.T.Rajavel (A1) and Manoharan Mohana (A2), the present petitioner, are husband and wife and were also practising advocates and members of Coimbatore Bar Association. A2, the petitioner was the accused in two criminal cases pending investigation in the state of Odisha, Ganjam District, Chamakandi police station for the offences under Sections 120B, 420, 408, 471 and 34 I.P.C r/w Sections 4, 5 and 6 of Prize Chits and Money Circulation Schemes (Banning) Act. Palanisamy (A3), the driver of the couple is also a co-accused in the present case.

7. The case of the prosecution was that A1 to A3 conspired to eliminate the deceased Ammasai, W/o.Marimuthu, Sivananda Colony, Coimbatore, who was a client of the advocate couple, and to create false records so as to show that the dead person was A2, the petitioner, so that it would enable the closure of the criminal case against A2 in the State of



Crl.M.P.No.11524 of 2022 ...
Crl.A.No.547 of 2020

Odisha. A1 and A3 strangled the victim Ammasai at the office and shifted the dead body to the residence of A1 and with the help of unscrupulous elements, manipulated the records to show that the deceased was A2 and that the death was a natural one. With the manipulated false records, they were even able to cremate the deceased Ammasai and managed to get a death certificate in the name of A2. Parallely, Sakunthala Devi (P.W.1), the daughter of the deceased, along with her husband P.W.2, Adi Ganesan found her victim mother missing and after a frantic search, lodged a complaint that her mother was missing. P.W.1 had compelling reasons to believe that her mother who had strained relationship with her father and also being the owner of 6.5 acres of land going missing was suspicious in nature. The police, investigating the missing person's case, stumbled upon the case of "A2's death" and a deeper probe into it revealed the facts which were already narrated above.

8. The learned counsel for the petitioner submitted that the earlier bail application in Crl.M.P.No.4237 of 2021 was dismissed on 28.01.2022 and the petitioner is in incarceration from the date of the judgment and hence seeks suspension of sentence and also agitated the very same point that has been raised in the previous petition for suspension of sentence.

9. Per contra, the learned Additional Public Prosecutor would contend that this is a unique case in which A1 to A3 have done to death an innocent victim who had come to A1 for legal consultation. A1 to A3 did



Crl.M.P.No.11524 of 2022 ...
Crl.A.No.547 of 2020

not stop with that and went further to use the murder of the victim to their advantage by manipulating all the related records in order to make it appear that only A2 had died. All these were done with an intention to save A2 from criminal cases against her in the State of Odisha. The very fact that A2 is alive and not dead and the other evidence directly pointing to be circumvented by them. Keeping in mind the heinous crime committed by the accused, there should be no leniency shown to the accused in any manner. He therefore, prayed for dismissal of the petition.

10. A1 is the husband of A2. A3 is tried along with A1 and A2 for the offence under Section 302 r/w 109 and 201 I.P.C and conviction has been laid as stated supra.

11. Considered the submissions made by the respective counsel.

12. The specific case of the prosecution is that in order to escape from the clutches of law in a criminal case pending in the Court of State of Odisha for alleged offence under Sections 120 (b), 420, 408, 468 and 471 r/w 34 of I.P.C and Prize Chits and Money Circulation Schemes (Banning) Act, the accused A1 and A2 (Advocates) are said to have conspired to kill a woman (their client) and to get a Death Certificate in the name of the second accused for producing the same in the criminal case and escape from the same.

13. Nearly after a year of the alleged incidence, during November 2013, P.W.22 Andiappan who was assumed as Health Inspector,



Crl.M.P.No.11524 of 2022 ...
Crl.A.No.547 of 2020

Corporation of Coimbatore noted a unique situation where the Death Certificate of the accused A2-Manoharan Mohana that was registered on 04.01.2012 has been cancelled and hence smelling something fishy, he lodged a complaint with the police on 27.01.2013 and that has opened up the investigation.

14. The independent witness of P.W.6 and the handwriting expert opinion of P.W.42 had been duly considered by the trial Court and held that the prosecution has clinchingly proved the charges through circumstantial evidence.

15.The earlier suspension of sentence petition was dismissed on 28.01.2022 on the ground that the points raised for suspension of sentence cannot be gone into at this juncture and all the aspects can been gone into only at the time of the final hearing and hence, both the points raised by the learned counsel for the petitioner stands negatived and in the absence of any change of circumstances and in view of the clear finding rendered by the learned Sessions Judge based upon the independent witnesses P.W.6, P.W.17 and handwriting expert opinion P.W.42, the trial Court has rightly laid the conviction and sentence and hence we are not inclined to grant the suspension of sentence.

16. 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



Crl.M.P.No.11524 of 2022 ...
Crl.A.No.547 of 2020

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 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)

17. Accordingly, this Crl.M.P.No.11524 of 2022, stand dismissed.

18. We observe that the finding rendered by us is limited only for



Crl.M.P.No.11524 of 2022 ...
Crl.A.No.547 of 2020

the purpose of disposal of this Criminal Miscellaneous Petition and we are
not expressing any opinion on the main appeal.

(P.N.P.J.) (T.K.R.J.)
18.10.2022

nvi

To

1. The V Additional District Judge,
Coimbatore.
2. The Public Prosecutor,
Madras High Court, Chennai – 600 104.



WEB COPY



Crl.M.P.No.11524 of 2022 ...
Crl.A.No.547 of 2020

P.N.PRAKASH, J.

and

RMT.TEEKAA RAMAN, J.

nvi

Order made in
Crl.M.P.No.11524 of 2022 in
Crl.A.No.547 of 2020

18.10.2022