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CRL MP(MD)



22

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

RESERVED ON : 05.07.2022

PRONOUNCED ON : 07.07.2022

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.6746 of 2022

IN

CRL A(MD) No.266 of 2022

1 RAJAPUTHIRAN

2 SEKARLAL

... PETITIONERS/1ST & 2ND APPELLANTS

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
KALIKAVILAI POLICE STATION,
KANYAKUMARI DISTRICT.
(CRIME NO.24 OF 2009)

... RESPONDENT/RESPONDENT

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 of the petitioners A1 and A2 imposed in S.C.No.8 of 2010, Dated 18.03.2022 on the files of learned Assistant Sessions Judge, Kuzhithurai pending disposal of this Criminal Appeal.

Prayer in CRL A(MD)No.266 of 2022:

To call for the records and set aside the conviction and sentence dated 18.03.2022 made in S.C.No.8 of 2010 on the files of the Hon'ble Assistant Session Judge, Kuzhithurai.



Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.S.C.HEROLD SINGH, Advocate for the petitioners and of MR.B.NAMBI SELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

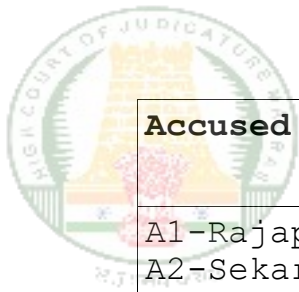
This Criminal Miscellaneous Petition has been filed to suspend the sentence passed in S.C.No.8 of 2010, dated 18.03.2022, on the file of the learned Assistant Sessions Judge, Kuzhithurai, till the disposal of this Criminal Appeal.

2.The case of the prosecution is that the injured persons P.W.1 and P.W.2 and the petitioners/accused are close friends, that there arose dispute with regard to money transactions and on that basis, a case in Crime No.420 of 2008 was registered against P.W.2 and others, that due to the said previous enmity, on 13.01.2009 at about 12.30 p.m., while the P.W.1 and P.W.2 were travelling in their two wheeler, the petitioners/accused, who were travelling in a Maruthi Car restrained the two wheeler with a common intention to do away P.W.1 and P.W.2, dashed against the two wheeler, that the accused got down from the car with weapons and attacked P.W.1 and P.W.2 indiscriminately, that when the P.W.3 and P.W.4 had tried to intervene, the accused had threatened them and that due to the said attack, P.W.1 and P.W.2 had sustained serious injuries. Hence, FIR came to be registered in Crime No.24 of 2009 for the offences under Sections 341, 294(b), 323 and 307 IPC.

3.The respondent police, after completing the investigation, has laid the final report for the offences under Sections 341, 294 (b), 323, 307, 506(2) IPC and Section 34 IPC.

4.During the trial, 11 witnesses have been examined as P.W.1 to P.W.11, 13 documents have been exhibited as Ex.P.1 to Ex.P.13 and 4 material objects were marked as M.O.1 to M.O.4, whereas, the accused have adduced neither oral nor documentary evidence.

5.The learned Sessions Judge, after considering the evidences adduced and the arguments advanced by both the sides, has passed the impugned judgment dated 18.03.2022 convicting the appellants 1 and 2/accused 1 and 2 for the offences under Sections 341, 294(b), 307 and 506(2) IPC and the appellants 3 and 4/accused 3 and 4 for the offences under Sections 341, 323, 307 r/w 34 IPC and awarded the sentence as mentioned below:-



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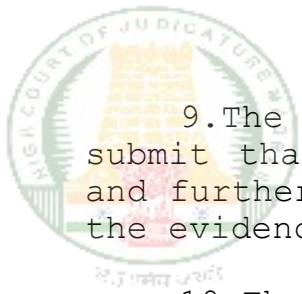


Accused	Provision under which convicted	Sentence
A1-Rajaputhiran A2-Sekarlal	under Section 341 IPC	Sentenced to undergo one month Simple Imprisonment each.
	under Section 294(b) IPC	Sentenced to undergo one month Simple Imprisonment each.
	under Section 307 IPC	Sentenced to undergo ten years Simple Imprisonment each.
	under Section 506(2) IPC	Sentenced to undergo two years Simple Imprisonment each.
A3-John @ Madal A4-Sathanantham	under Section 341 IPC	Sentenced to undergo one month Simple Imprisonment each.
	under Section 323 IPC	Sentenced to undergo six months Simple Imprisonment each.
	under Sections 307 r/w 34 IPC	Sentenced to undergo ten years Simple Imprisonment each.

6.The petitioners, who are the appellants 1 and 2, along with the appellants 3 and 4 have filed a petition in CrI.M.P.(MD)No.4413 of 2022 seeking suspension of sentence and this Court, vide order dated 19.05.2022, has suspended the sentence of the appellants 3 and 4 and dismissed the petition as against the appellants 1 and 2.

7.As rightly contended by the learned counsel for the petitioners, the petitioners' application was dismissed mainly on the ground that they are having more than 25 previous cases.

8.The learned Additional Public Prosecutor has furnished the particulars of the previous cases, wherein, the first appellant is shown to have 24 cases, in which, 15 cases were ended in acquittal and 4 cases were closed as 'mistake of fact' and the second appellant is shown to have 21 cases and out of 21 cases, 19 cases were ended in acquittal.



9.The learned counsel appearing for the petitioners would submit that there are several infirmities in the prosecution case and further there are contradictions in material particulars between the evidence of the prosecution witnesses.

10.The learned Additional Public Prosecutor appearing for the respondent would submit that there are enough materials available on record against the petitioners and hence, he strongly opposed to grant suspension of sentence.

11.Considering the above facts and circumstances of the case and also the facts that sentence imposed on the appellants 3 and 4 was already suspended by this Court vide order dated 19.05.2022 and that the petitioners have been in incarceration from the date of judgment i.e., 18.03.2022 and also taking note of the disposal of the previous cases, this Court is of the view that the petitioners herein are entitled to the relief of suspension of sentence.

12.Accordingly, the relief of suspension of sentence and bail is granted to the petitioners on the following conditions:-

(i) The petitioners shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) each with two sureties each for a like sum to the satisfaction of the learned Assistant Sessions Judge, Kuzhithurai.

(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; and

(iii) The petitioners shall report before the trial Court at 10.30 a.m., on all working days until further orders.

sd/-

07/07/2022

/ TRUE COPY /

08/07/2022

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 ASSISTANT SESSIONS JUDGE, KUZHITHURAI.

2 THE INSPECTOR OF POLICE, KALIKAVILAI POLICE STATION,
KANYAKUMARI DISTRICT.

3 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI.

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

+1 CC to M/s.S.C.HEROLD SINGH, Advocate (SR-6713[I] dated
07/07/2022)

ORDER

IN

CRL MP(MD) No.6746 of 2022

IN

CRL A(MD) No.266 of 2022

Date :07/07/2022

RS/VR/SAR.2 (08.07.2022) 5P-6C