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CRL MP(MD) N



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

Monday, the Fourteenth day of November Two Thousand and Twenty Two
PRESENT

The Hon`ble Mr.Justice G.ILANGOVAN
CRL.M.P. (MD)Nos.13652, 13450 & 13581 of 2022
in
CRL.A. (MD)Nos.723, 714 & 717 of 2022

VIYAKULA ADIMAI ... PETITIONER/APPELLANT/ACCUSED NO.4
IN CRL MP(MD).13652/2022 IN CRL A(MD).723/2022

RAJU ... PETITIONER/APPELLANT
IN CRL MP(MD).13450/2022 IN CRL A(MD).714/2022

1 JERRYBAI
2 SHALET @ MARIA SHALET
3 SHIJU
4 YEASUDHAS
5 CHRISTHUDASAN ... PETITIONERS/APPELLANTS
IN CRL MP(MD).13581/2022 IN CRL A(MD).717/2022

Vs

STATE REP.BY
THE INSPECTOR OF POLICE
KOLLANKODU POLICE STATION,
KANYAKUMARI DISTRICT.
CR.NO.155/2015 ... RESPONDENT/RESPONDENT/COMPLAINANT
IN CRL MP(MD).13652/2022 IN CRL A(MD).723/2022

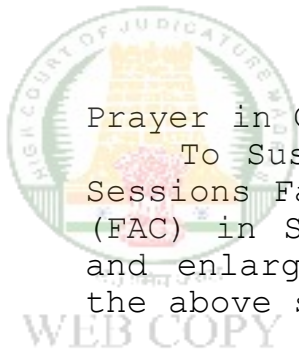
... RESPONDENT/RESPONDENT
IN CRL MP(MD).13450/2022 IN CRL A(MD).714/2022
& IN CRL MP(MD).13581/2022 IN CRL A(MD).717/2022

Prayer in CRL MP(MD).13652/2022 in CRL A(MD).723/2022 :

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 on the Petitioner/appellant/accused No.4 in S.C.No.18/2017 on the file of the Court of Sessions Fast Track Mahila Camp Court, Kanyakumari at Kuzhithurai (FAC) Vide Judgement dt 26.10.2022 and enlarge the petitioner on bail pending disposal of the criminal appeal.

Prayer in CRL A(MD).723/2022 :

To call for the records pertaining to the judgment passed in S.C.No.18 of 2017 on the file of the court of Sessions Fast Track Mahila Camp Court, Kanyakumari at Kuzhithurai (FAC) vide dated 26.10.2022 and set aside the conviction and sentence by allowing this Criminal Appeal.



Prayer in CRL MP(MD).13450/2022 in CRL A(MD).714/2022 :

To Suspend the Sentence of Imprisonment imposed by the Hon'ble Sessions Fast Track Mahila Camp Court, Kanniyakumari at Kuzhithurai, (FAC) in Sessions Case No.18/2017 by the judgment dated 26.10.2022 and enlarge the petitioner/appellant on bail, pending disposal of the above said criminal appeal.

Prayer in CRL A(MD).714/2022 :

To call for the records and set aside the judgment and conviction dated 26.10.2022, the Hon'ble Sessions Fast Track Mahila Camp Court, Kanniyakumari at Kuzhithurai (FAC) in S.C.No.18 of 2017 and acquit the Appellant.

Prayer in CRL MP(MD).13581/2022 in CRL A(MD).717/2022 :

To pass an order to suspend the sentence imposed by the Learned Sessions Fast Track Mahila Camp Court, Kanniyakumari at Kuzhithurai in S.C.No.18 of 2017 dated 26.10.2022 and enlarge the petitioner on bail, pending disposal of the criminal appeal.

Prayer in CRL A(MD).717/2022 :

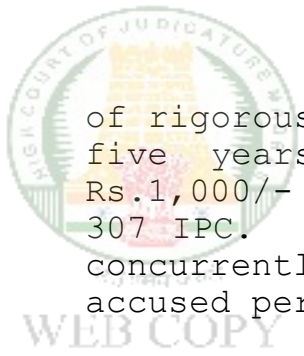
To pass an order to call for the records and set aside the judgment passed in S.C.No.18 of 2017 dated 26.10.2022 on the file of the Sessions Fast Track Mahila Camp Court, Kanniyakumari at Kuzhithurai (FAC) and allow the Criminal Appeal.

Common 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.SHAJI CHELLAN L, Advocate for the petitioner in CRL MP(MD).13652/2022 in CRL A(MD).723/2022 and MR.RAMESH RAJA P T, Advocate for the petitioner in CRL MP(MD).13450/2022 in CRL A(MD).714/2022 and MR.SIVAKUMAR S, Advocate for the petitioner in CRL MP(MD).13581/2022 in CRL A(MD).717/2022 and of MR.SS.MADHAVAN, Government Advocate (Crl.Side) on behalf of the Respondent in all petitions, while admitting the CRL A(MD) Nos.723, 717/2022, the court made the following order:-

This Criminal Miscellaneous Petitions are filed to suspend the sentence imposed by the learned Sessions Judge, Fast Track Mahila Court, Kanniyakumari at Nagercoil, dated 26.10.2022, in S.C.No.18 of 2017 and enlarge the petitioners on bail, pending disposal of the above said Criminal Appeal.

2.The learned counsel for the petitioner submitted that the petitioners, who are the accused in this case, have been found guilty and convicted by the learned Sessions judge and sentenced as follows:

2.1.Totally there are 7 accused in this case. The accused 1 to 7 are sentenced to undergo two years of rigorous imprisonment each for the offence under Section 147 IPC, two years of rigorous imprisonment each for the offence under Section 148 IPC, two years



of rigorous imprisonment each for the offence under Section 307, five years rigorous imprisonment each and to pay a fine of Rs.1,000/- each in default to undergo six months each under Section 307 IPC. The above said sentences of A1 to A7 were ordered to run concurrently. The period of imprisonment already undergone by the accused persons were order to set off under Section 428 Cr.P.C.

3.The case of the prosecution in brief:

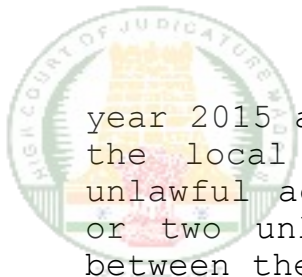
On 04.06.2015 at about 2.00 p.m., when PW2 and PW1, along with PW3, PW4, PW5 and PW7 were on their routin patrol duty, when they were nearing Neerodithurai Titotech Computed Shop at Malaikan Section, they found all the accused persons in that place with deadly weapons. So the police team told them to disburse stating that they should not assemble in that place with deadly weapons. But the above said persons did not oblige and started to assault the police team. As a result of which the above said complaint has been registered. After completing the process of investigation final report was filed making allegations and charges against the accused persons. On the side of the prosecution 14 witnesses have been examined and 7 documents were marked. Apart from two objects were marked.

4.The trial Court found that the charges framed against the accused persons were proved beyond all reasonable doubt and accordingly, they were convicted and sentenced to undergo various imprisonments under various provisions of IPC as stated above. They were taken into custody immediately. Challenging the above said conviction and sentence, appeals have been preferred by the petitioners. Pending appeal, these petitions have been filed seeking suspension of sentence.

5.Heard both sides.

6.Even at the out set the learned Additional Public Prosecutor submitted that the above said area is experiencing trouble between two groups of fisherman community people. Over which several occurrences have been taken place. On the particular date of the above said occurrence, the police parties got information that the accused persons are going to assemble with deadly weapons to cause assault upon the opposite group. On hearing the information only the police team went to the place of occurrence. At that time all the accused joined together and tried to assault the police team with deadly weapons. According to him, if the sentence is suspended, then the accused persons again may indulge in such sort of unlawful activities and disturb the peace.

7.Per contra the counsel for the petitioner submitted that absolutely there was no previous enmity between the two groups of people as mentioned by the Prosecutor. It is a private dispute between two family members and this is the first occurrence, which is projected by the prosecution. The occurrence is of the



year 2015 and thereafter, there was no trouble between the 1 in the local areas. However, there are one or two incidents of unlawful activities during the fishing activity and except the one or two unlawful activities, absolutely there is no such quarrel between the two groups of people as projected by the prosecution.

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8. Reading of the judgment shows that it is the allegation on the part of the prosecution that group of people assembled in the place of occurrence with deadly weapons for the purpose of making assault to the opposite group called Pangali group. But during the course of the trial process, the independent witnesses turned hostile and none supported the case of prosecution as to the above said group rivalry. It is not also brought to the notice of this Court that subsequent to the above said occurrence in the year 2015, the above said rivalry is continuing and causing trouble to the public.

9. Considering the fact that none was injured in the above said occurrence and the public has not supported the case of prosecution with regard to the group rivalry and also considering the fact that the offence is of the year 2015 and 7 years have been lapsed and there after no untoward incident has been reported, this Court is inclined to allow this petition with following conditions.

10. Therefore, the suspension of sentence petitions are allowed and the substantive sentence of imprisonment alone is suspended pending disposal of the appeal and the petitioners are directed to be enlarged on bail on condition that the petitioners shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Fast Track Mahila Court, Kanniyakumari at Nagercoil, and on further condition that the petitioners shall appear before the said Court once in a week at 10.30 a.m. pending appeal. If any new case has been registered against these petitioners, then the suspension of sentence granted to them in this case will automatically stand cancelled and they will be secured and taken into custody for serving the sentence period.

11. Registry is directed to call for records in the main appeal and prepare the typed set of papers and list the matter in the usual Course. After the typed set of papers made ready, the petitioners shall argue the main appeal itself without fail.

sd/-

14/11/2022

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15/11/2022

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.



TO

- 1 THE SESSIONS JUDGE, FAST TRACK MAHILA COURT,
KANNIYAKUMARI AT NAGERCOIL.
- 2 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI.
- 3 THE INSPECTOR OF POLICE, KOLLANKODU POLICE STATION,
KANYAKUMARI DISTRICT.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO

THE SECTION OFFICER, CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to M/s.L.SHAJI CHELLAN, Advocate (SR-12952[I] dated
14/11/2022)

+1 CC to M/s.P.T.RAMESH RAJA, Advocate (SR-12953[I] dated
14/11/2022)

+1 CC to M/s.S.SIVAKUMAR, Advocate (SR-12944[I] dated 14/11/2022)

ORDER IN

CRL.M.P. (MD) Nos.13652, 13450 & 13581 of 2022
in CRL.A. (MD) Nos.723, 714 & 717 of 2022

Date :14/11/2022

TM

RS/TR/SAR.4 (15.11.2022) 5P-9C