



*Crl.M.P.Nos.9471 & 9475 of 2022
in Crl.A.Nos.722 & 723 of 2022*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.SUNDAR
and

THE HONOURABLE MRS.JUSTICE K.GOVINDARAJAN
THILAKAVADI

Crl.M.P.Nos.9471 & 9475 of 2022
in
Crl.A.Nos.722 & 723 of 2022

R.Arun Kumar

..Petitioner/A-3 in both Crl.M.Ps.

Vs.

State Rep by
Inspector of Police,
Paramathy Circle,
Namakkal District.
(Crime Nos.123 & 119 of 2016)

.. Respondent in both Crl.M.Ps.

Common Prayer: Criminal Miscellaneous Petitions have been filed under Section 389 (1) of Cr.P.C to suspend the sentences imposed against the petitioner in S.C.Nos.122 and 123 of 2016 dated 21.08.2019 by the learned Principle Session Judge, Namakkal District and enlarge him on bail.

For Petitioner : Mr.C.D.Johnson
in both Crl.M.Ps.

For Respondent : Mr.E.Raj Thilak
in both Crl.M.Ps. Additional Public Prosecutor



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COMMON ORDER

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[Order of the Court was made by M.SUNDAR, J.]

This common order will now dispose of both the captioned 'Criminal Miscellaneous Petitions' [hereinafter 'Crl.M.Ps.' in plural and 'Crl.M.P.' in singular for the sake of convenience and clarity]. Captioned Crl.M.Ps. have been filed *inter-alia* under Section 389(1) of 'Code of Criminal Procedure 1973' [hereinafter 'Cr.P.C.' for brevity] with prayers for suspensions of sentences.

2. Petitioner in the captioned Crl.M.Ps. is Accused No.3 [A3 in S.C.No.122 of 2016 and S.C.No.123 of 2016, both on the file of 'learned Principal Sessions Judge's Court', Namakkal {hereinafter 'trial Court' for the sake of convenience and clarity}]. To be noted Crl.M.P.No.9471 of 2022 in Crl.A.No.722 of 2022 arises out of S.C.No.122 of 2016 and Crl.M.P.No.9475 of 2022 in Crl.A.No.723 of 2022 arises out of S.C.No.123 of 2016.

3. Mr.C.D.Johnson, learned counsel for petitioner and Mr.E.Raj Thilak, learned Additional Public Prosecutor for respondent in both the Crl.M.Ps. are before us.



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4. The factual matrix is similar with very minor differences but there are two Session Cases as there are two occurrences, one on 03.05.2016 and the other on 07.05.2016. In all other aspects, the factual matrix is similar with very minor differences. The conviction and sentences are also almost similar with very minor differences. To be noted, minor differences are such that they do not impact the dispositive reasoning qua Section 389(1) of Cr.P.C. legal drill.

5. The entire matter turns on a very short point. In both Sessions cases, there are two charges against the petitioner (A3). In S.C.No.122 of 2016, the first charge against the petitioner is under Section 364-A of 'The Indian Penal Code (45 of 1860)' [hereinafter 'IPC' for the sake of convenience and clarity] and the second charge is under Section 395 read with 397 of IPC. In S.C.No.123 of 2016, the first charge against the petitioner is under Section 364-A of IPC and the second charge is under Section 394 of IPC.

6. In S.C.No.122 of 2016 for the first charge, the sentence owing to conviction is life imprisonment and Rs.3,000/- fine / four years simple imprisonment in the event of default to pay the fine amount. As regards the



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second charge, the conviction qua Section 395 of IPC is five years rigorous imprisonment and Rs.3,000/- fine / fifteen months simple imprisonment in the event of default to pay the fine amount. As regards Section 397 of IPC, there was an acquittal though the charge framed was Section 395 read with Section 397 of I.P.C.

7. In S.C.No.123 of 2016 for the first charge, the sentence owing to conviction is life imprisonment and Rs.2,000/- fine / four years simple imprisonment in the event of default to pay the fine amount. As regards the second charge, the conviction qua Section 394 of IPC is five years rigorous imprisonment and Rs.2,000/- fine / fifteen months simple imprisonment in the event of default to pay the fine amount.

8. Before proceeding further, it may be appropriate to capture the case of the prosecution in both the session cases which has been believed by the trial Court.

9. In S.C.No.122 of 2016, the case of the prosecution is that on 03.05.2016, when de-facto complainant loaded broiler chickens in a lorry



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and was carrying it to Ulundurpet, the lorry was waylaid somewhere near PGP College at Karur and a sum of Rs.2,750/-, one Lava Cell phone worth about Rs.1,000/- and another sum of Rs.2,000/- from the load man were grabbed.

10. In S.C.No.123 of 2016, the case of the prosecution believed by the trial Court is, on 07.05.2016, when a truck with cargo was proceeding to Tiruvanandapuram, it was waylaid near Jayadevi Poultry Farm and Rs.8,000/- cash and Cell phone were grabbed. Considering the nature of the submissions and the legal drill on hand, i.e., suspension of sentence under Section 389(1) of Cr.P.C., we deem it appropriate to say that it may not be necessary to be detained by facts any further.

11. Learned counsel for petitioner submitted that there is conviction in both cases as regards Section 364-A of IPC. Section 364-A of IPC kicked in on and from 22.05.1993 and the same reads as follows:

'364-A. Kidnapping for ransom, etc.—

Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause



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death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or [any foreign State or international inter-governmental organisation or any other person] to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life, and shall also be liable to fine.'

12. Considering the charge and considering the prosecution case which was believed by the trial Court, on a plain reading of the language in which Section 364-A is couched brings to light that on the face of the record the conviction may not be sustainable and this *prima-facie* aspect of the matter is very palpable. The language in which Section 364-A is couched and the prosecution case believed by the trial Court speak for themselves and therefore we deem it appropriate to not to dilate further on this aspect of the matter. Learned counsel for petitioner also drew our attention to Section 464 of Cr.P.C. which talks about the effect of error in charge.

13. Section 464 of Cr.P.C. reads as follows:



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'464. Effect of omission to frame, or absence of, or error in, charge.

(1) No finding sentence or order by a Court of competent jurisdiction shall be deemed invalid merely on the ground that no charge was framed or on the ground of any error, omission or irregularity in the charge including any misjoinder of charges, unless, in the opinion of the Court of appeal, confirmation or revision, a failure of justice has in fact been occasioned thereby.

(2) If the Court of appeal, confirmation or revision is of opinion that a failure of justice has in fact been occasioned, it may—

(a) in the case of an omission to frame a charge, order that a charge be framed and that the trial be recommended from the point immediately after the framing of the charge.

(b) in the case of an error, omission or irregularity in the charge, direct a new trial to be had upon a charge framed in whatever manner it thinks fit:

Provided that if the Court is of opinion that the facts of the case are such that no valid charge could be preferred against the accused in respect of the facts proved, it shall quash the conviction.'

14. Adverting to aforementioned Section 464 of Cr.P.C., learned counsel submitted that the chances of acquittal are very palpable, i.e., tangible.



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15. Learned Additional Public Prosecutor in response to the above argument submitted that there is conviction on the second charge, namely, Section 395 of IPC as regards S.C.No.122 of 2016 and Section 394 of IPC as regards S.C.No.123 of 2016. There is a straightforward answer on a demurrer to this submission of the prosecutor. That straightforward answer is, assuming the conviction is sustained, the petitioner has already served more than the sentence that has been awarded by the trial Court. To be noted, as regards Section 395 of IPC in S.C.No.122 of 2016, the sentence is five years rigorous imprisonment and fifteen months simple imprisonment in the event of default to pay fine amount of Rs.3,000/- but the petitioner has been incarcerated from 08.05.2016 to-date continuously which is seven years as of today. Ironically the sentence would turn seven today. Be that as it may, as regards S.C.No.123 of 2016, the sentence is five years rigorous imprisonment and fifteen months simple imprisonment in the event of default to pay fine amount of Rs.2,000/-. Therefore, the same principle applies to the second Session Case also. In this view of the matter, we deem it appropriate to respectfully refer to a judgment of Hon'ble Supreme Court rendered very recently (02.05.2023) i.e., **Omprakash Sahni** case, being ***Omprakash Sahni***



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vs. *Jai Shankar Chaudhary* reported in **2023 SCC OnLine SC 551**. Hon'ble

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Supreme Court while dealing with principles of law/test qua suspension of sentence, made it clear that if a convict appears to be entitled to have an acquittal at the hands of the Court, he should not be kept behind bars for a long time till conclusion of the appeal which may take a longer time for decision and disposal and as regards test in cases of such nature, Hon'ble Supreme Court postulated that something which is very apparent on the face of the record on the basis of which the Appellate Court arrives at prima-facie satisfaction that the conviction may not be sustainable such prima-facie satisfaction should be palpable. The only rider is, this should be done without re-appreciation of evidence under Section 389 legal drill. In the case on hand, there is no re-appreciation of evidence and this is a straightforward interpretation of language in which Section 364-A of IPC is couched as regards charge No.1 and sentence served thus far in both the Session cases.

16. Learned Additional Public Prosecutor made a strong attempt to show cause against release by adverting to the counter affidavit. To be noted, a counter affidavit was filed owing to first proviso of Section 389(1) of Cr.P.C. which kicked in on and from 23.06.2006. Adverting to the counter



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affidavit of State and more particularly, paragraph 6 of the counter affidavit in Crl.M.P.No.9471 of 2022, learned Additional Public Prosecutor submitted that there is another case qua petitioner in the same police station but it so transpires that the other case is the aforementioned Sessions Case. In other words there is no case other than the two sessions cases on hand. Therefore, this argument and this effort on the part of learned Additional Public Prosecutor to show cause against the release within the meaning of first proviso of Section 389(1) of Cr.P.C. does not cut ice and pales into insignificance.

17. The sum sequitur of the discussion and dispositive reasoning set out thus far is, this Court accedes to the prayers for suspension of sentences and the following common order is passed:

(i) The sentences in S.C.Nos.122 and 123 of 2016 both dated 21.08.2019 both on the file of Principal Sessions Judge, Namakkal are suspended pending appeals subject to other conditions adumbrated in the sub paragraphs infra;



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(ii) The petitioner shall deposit the fine amounts in both the Session Cases, if not already deposited;

(iii) The petitioner shall execute a bond for a sum of Rs.10,000/- with two sureties of whom one should be a blood relative, to be noted, each for a like sum of Rs.10,000/- to the satisfaction of the jurisdictional Judicial Magistrate Court, i.e., learned Judicial Magistrate, Paramathi, Namakkal District;

(iv) The petitioner shall appear before the trial Court, i.e., Principal Sessions Court, Namakkal on the first working day of every month at 10.30 a.m. until further orders;

(v) If for some reason a petition under Section 317 of Cr.P.C. is filed, we make it clear that it is open to the learned Principal Session Judge to consider the same on its own merits and in accordance with law notwithstanding the conditions imposed by us supra.



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Captioned Crl.M.Ps. disposed of in the aforesaid manner.

(M.S.,J.) (K.G.T.,J.)
08.06.2023

Index : Yes/No
Speaking / Non speaking order
Neutral Citation : Yes/No
rsi

To

- 1.The Inspector of Police,
Paramathy Circle,
Namakkal District.
- 2.The Principle Session Judge,
Namakkal District.
- 3.The Judicial Magistrate,
Paramathy, Namakkal District.
- 4.The Superintendent,
Central Prison,
Trichy District.
- 5.The Public Prosecutor
High Court, Madras.



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