



*Crl.M.P.No.15714 of 2023
in Crl.A.No.347 of 2020*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2023

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

AND

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

**Crl.M.P.No.15714 of 2023
in Criminal Appeal No.347 of 2020**

Rajkumar, S/o Karunakaran

... Petitioner

-Vs-

State, rep.by
The Inspector of Police
Reddichavadi Police Station
Cuddalore District
(Crime No.107 of 2016)

.... Respondent

Prayer : Petition under Section 482 of Cr.P.C., to recall the order passed by this Court in Crl.M.P.No.7750 of 2020 in Crl.A.No.347 of 2020 dated 27.07.2023 as against the petitioner /

For Petitioner : Mr.T.Maha Vishnu
for Mr.Thamarai Selvan

For Respondent : Mr.R.Muniyappa Raj
Additional Public Prosecutor
Assisted by Mr.Sylvester John



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ORDER

(Order of the Court was made by **R.SURESH KUMAR, J.**)

This petition has been filed to recall the order passed in Crl.M.P.No.7750 of 2020 in Crl.A.No.347 of 2020 dated 27.07.2023.

2. Crl.M.P.No.6845 of 2023 was filed by A1, A2 and A3. Crl.M.P.No.3868 of 2023 was filed by A4 and A5 and Crl.M.P.No.7750 of 2020 was filed by A6, A7, A9 and A10, seeking suspension of sentence.

3. When these matters were taken up for hearing on 27.07.2023, the learned counsel who appeared for Crl.M.P.No.6845 of 2023 submitted that, insofar as A1 Lakshmanan is concerned, in view of the specific overt act, the Court since was not inclined to consider grant of suspension of sentence, he wanted to withdraw the petition insofar as Lakshmanan / A1 is concerned. Therefore, in respect of him the petition was dismissed as withdrawn. With regard to others viz., A2, A3, A4, A5 as well as A6 to A10 the respective learned counsel were present and all the three petitions were ordered except in respect of A1.

4. However, the fact remains that Crl.M.P.No.7750 of 2020 was filed only in respect of A6, A7, A9 and A10 and not for A8 Rajkumar. However, based on the representation made by the learned counsel appearing for the petitioners / accused, all



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the petitions except in respect of A1 were allowed by order dated 27.07.2023 including that of Rajkumar / A8 for whom since petition has not been filed, in order to recall the order the present Crl.M.P.No.15714 of 2023 has been filed.

5. We have heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor appearing for the State / respondent.

6. Since the learned Advocate General Mr.R.Shunmugasundaram also was present before this Court, the Court requested him to clarify this position as to whether filing an application to seek for suspension of sentence is mandatory within the meaning of Section 389 of Code of Criminal Procedure, 1973.

7. Learned Advocate General has clarified that, under Section 389(3), if the sentence is less than three years, it is for the Court concerned to consider for suspension of sentence imposed against any accused. Insofar as other sentences which is beyond three years also, normally either at the time of filing of the appeal or subsequently petitions would be filed seeking suspension of sentence. However, it is not mandatory within the meaning of Section 389 of Cr.P.C., to make an application to seek suspension of sentence. In deserving cases the Court can suo motu exercise its power to suspend the sentence imposed against the accused.



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8. In view of the said submission that has been made by the learned Advocate General and the power vested in this Court under Section 389 of the Cr.P.C., we are of the view that, even though petition has not been filed in respect of A8 Rajkumar S/o Karunakaran, the order that has been passed by this Court dated 27.07.2023 commonly for all the accused including the petitioners in Crl.M.P.No.7750 of 2020 covering the said A8 / Rajkumar also by suspending the sentence, cannot be said to be an order with infirmity. Therefore, the present petition filed to recall the said order, in the considered opinion of this Court, need not be entertained.

9. It is also to be noted that the said A8 / Rajkumar filed Criminal Appeal No.347 of 2020. Therefore, since he has already filed an appeal challenging the sentence imposed against him, he is also entitled to be considered for suspension of sentence when other co-accused who are also convicted in the same case have come before this Court seeking suspension of sentence.

10. Moreover, this Court already found that, in respect of the same overt act, except A1 all other accused are entitled to seek for suspension of sentence and since the order dated 27.07.2023 has been passed based on merits, we do not find any reason to recall the order dated 27.07.2023. Accordingly, by confirming the said order dated 27.07.2023, this petition seeking to recall the order is disposed of.



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11. It is made clear that, this order has been passed with the aforesaid clarification of the learned A.G. and by considering the peculiar circumstances as discussed herein above. Therefore, it cannot be treated as a precedent in future by any accused person who file appeal before this Court against a sentence beyond three years, as if seeking suspension of sentence is automatic one without filing a separate petition for suspension of sentence under Section 389 of the Cr.P.C.

(R.S.K.,J.) (K.B.,J.,)
27.09.2023

KST

To

The Public Prosecutor, High Court, Madras.



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