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Crl.M.P.No.16672 of 2023 in Crl.A.No.1138 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.10.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.16672 of 2023 in
Crl.A.No.1138 of 2023

1.Anbarasan @ Anbu,
S/o.Rajendran

2.Ramkumar,
S/o.Muthuramalingam

3.Thangasamy,
S/o.Boominathan

4.Kulaindaiammal,
W/o.Boominathan

5.Anandhi,
W/o.Ramkumar

... Petitioners

Vs.

STATE REP: BY,
The Inspector of Police,
J-7, Velacherry Police Station,
Chennai-600 042.
Crime No.184 of 2022.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) the Code of Criminal Procedure, to suspend the sentence passed by the learned I Additional Sessions Judge, City Civil Court at Chennai, dated 12-09-2023 in S.C.No.411 of 2022 and they may be enlarged on bail.



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For Petitioners : Mr.K.Kannan
For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence passed by the learned I Additional Sessions Judge, City Civil Court at Chennai, dated 12.09.2023 in S.C.No.411 of 2022.

2.The petitioners who are the accused in S.C.No.411 of 2022 faced trial for offence under Sections 148, 307 r/w 34 r/w 149 of IPC. On conclusion of trial, the trial Court convicted all the accused and sentenced A1 to A3 to undergo R.I for a period of one year and to pay a fine of Rs.2,000/-, in default to undergo S.I for three months for offence under Section 148 of IPC. For offence under Section 307 r/w 34 r/w 149 of IPC, A1 to A3 to undergo five years R.I and to pay a sum of Rs.10,000/- (Rupees ten thousand only), in default to undergo S.I for a period of one year. As regards A4 and A5 are concerned, they were convicted for offence under Section 148 of IPC and sentenced to undergo R.I for a period of three months and to pay a fine of Rs.1,000/-, in default to undergo S.I for one months. For offence under Section 307 r/w 34 r/w 149 of IPC, A4 and A5 sentenced to undergo R.I for six months and to pay a fine of Rs.5,000/-, in default to undergo S.I for two



months.

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3.At the outset, the learned counsel for the petitioners submitted that as regards the conviction and sentence against A4 and A5, the same suspended by the trial Court till today i.e., 18.10.2023. Since the learned Additional Public Prosecutor seeks time for filing counter in this petition, the learned counsel for the petitioners seeks permission of this Court to withdraw this petition as regards A1 to A3 with liberty to file a fresh petition. As regards A4 and A5, the trial Court suspended the sentence till today and the same is confirmed by the learned Additional Public Prosecutor.

4.The case of the prosecution in brief is that due to previous enmity on 02.04.2022, A1 to A5 unlawfully assemble in front of the house of one Ramalakshmi at Velacherry armed with deadly weapons and started attacking PW1 indiscriminately. Due to which PW1 sustained injuries on head, face, hands and legs. PW2 and PW3 are the wife and daughter of the PW1, rushed there to rescue him and they were also threatened. On seeing others coming to rescue PW1, A1 to A5 fled in two wheeler leaving PW1 in a pool of blood. Thereafter, the complaint lodged by the PW1 and the respondent Police



registered a case in Crime No.184 of 2022 for offence under Sections 294(b), 341, 147, 148 and 307 of IPC. On conclusion of the investigation, charge sheet filed before the trial Court.

5.During trial, PW1 to PW9 examined and documents Exs.P1 to P18 marked on the side of the prosecution and five material objects produced. On the side of the defence, no witness examined and no documents marked. On conclusion of the trial, the trial Court convicted the petitioners as stated above.

6.The contention of the petitioners is that the petitioners/accused and PW1 to PW4 are all relatives and there was some dispute between them. A4 is the sister and A5 is the wife of A2. The allegation against them is that they pelted stones, due to which PW1 sustained injuries. In this case, the stones used for attacking PW1 not seized as material objects. Apart from it, there is no other evidence in any form against A4 and A5. Further, they have been falsely projected as though they were present in the scene of occurrence and also participated with common intention to attack PW1 with the other accused. The trial Court invoking Sections 149 r/w 34 of IPC convicted A4



and A5. It is purely on moral grounds and nothing more. Hence, he prayed for suspension of sentence for A4 and A5.

7.The learned Additional Public Prosecutor appearing for the respondent Police submitted that A1 to A5 are close relatives who had grudge and enmity against PW1 to PW3. Finding that PW1 was alone, A1 to A3 armed with deadly weapons, attacked PW1 indiscriminately. PW2 and PW3 rushed to rescue and they were also threatened and kept away. As regards A4 and A5 are concerned, they only pelted stones on PW1 and PW1 sustained injuries. The presence of A4 and A5 clearly spoken by all the three witnesses PW1 to PW3. The trial Court considering that A4 and A5 are female and also on overall consideration, imposed lesser sentence to them. He further submitted that the trial Court had suspended the sentence of A4 and A5 till date.

8.This Court considered the submissions and perused the materials available on record.



9.This Court permits the withdrawal of the suspension of sentence as regards A1 to A3 for the above said reasons giving liberty for the learned counsel for the petitioner to renew the petition later.

10.As regards A4 and A5 are concerned, it is seen that the averments against them is that they only pelted stones on PW1 and there is nothing from the Observation Mahazar and Rough Sketch to show that stones available in the scene of occurrence and no stones produced as material objects. A4 and A5 are women from the same family and they have no bad antecedents.

11.In view of the above, this Court is inclined to suspend the substantive sentence of imprisonment alone as regards A4 and A5 till the disposal of the appeal.

12.Accordingly, the Substantive Sentence of Imprisonment imposed on the A4 and A5 are suspended till the disposal of the appeal and they are ordered to be enlarged on bail, on condition that they shall execute a bond for a sum of Rs.5,000/- (Rupees Five thousand only) each with two sureties, each for a like sum to the satisfaction of the trial Court.



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13. Accordingly, this Criminal Miscellaneous Petition is ordered in so far as A4 and A5/petitioners 4 and 5 are concerned and dismissed as withdrawn in so far as A1 to A3/petitioners 1 to 3.

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Index: Yes/No
Internet: Yes/No

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To

1. The I Additional Sessions Court,
City Civil Court at Chennai,
2. The Inspector of Police,
J-7, Velacherry Police Station,
Chennai-600 042.
3. The Public Prosecutor,
High Court, Madras.

Note: Issue Order Copy on 18.10.2023.



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M.NIRMAL KUMAR, J.

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