



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

Monday, the Twenty Seventh day of March Two Thousand and
Twenty Three

WEB COPY

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

Crl.M.P(MD)No.3803 of 2023
in
Crl.A. (MD)No.173 of 2023

S.SUDALAIMANI

... PETITIONER/APPELLANT

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE
THENPAGAM POLICE STATION,
THOOTHUKUDI DISTRICT.
CR.NO.803/2016

... 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 passed against the petitioner by the learned II Additional District and Sessions Judge Thoothukudi District in SC.No.108/2017 dt 01.04.2022 pending disposal of the above criminal appeal and thus render justice.

PRAYER IN Crl.A. (MD)No.173 of 2023:

To call for the records relating to the in S.C.No.108 of 2017 dated 01.04.2022 on the file of the learned II Additional District and Sessions Judge, Thoothukudi District and set aside the same by allowing this criminal appeal.

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.SELVARAJ.V, Advocate for the petitioner and of M/S.SS.MADHAVAN, Government Advocate(Crl.side) on behalf of the Respondent the court made the following order:-

RESERVED ON	20.03.2023
PRONOUNCED ON	27.03.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned II Additional District and Sessions Judge, Thoothukudi District in S.C.No.108 of 2017, dated 01.04.2022, till the disposal of this Criminal Appeal.



2. The case of the prosecution is that on 29.06.2016 at about 11.00 p.m., due to their frequent quarrels between the petitioner/husband and the victim/wife, the petitioner had poured kerosene on the victim and set fire and that the victim, despite treatment, had succumbed to the burn injuries on 15.07.2016 and on the basis of the complaint lodged, FIR came to be registered in Crime No.803 of 2016 for the offences under Sections 302 and 506(2) IPC.

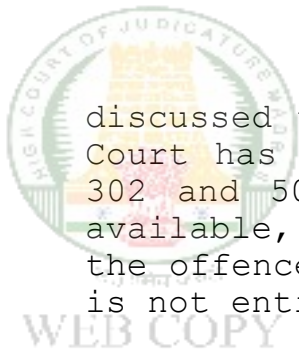
3. The respondent, after completing the investigation, has filed the final report for the offences under Sections 294(b), 302 and 506(2) IPC and the case was taken on file in P.R.C.No.31 of 2016 on the file of the Judicial Magistrate No.1, Thoothukudi. Thereafter, the case was committed to the Sessions Court and the same was taken on file in S.C.No.108 of 2017 on the file of the Principal Sessions Court, Thoothukudi and subsequently, the case was made over to the learned II Additional District and Sessions Judge, Thoothukudi District.

4. During trial, the prosecution has examined 17 witnesses as P.W.1 to P.W.17, exhibited 23 documents as Ex.P.1 to Ex.P.23 and marked 3 material objects as M.O.1 to M.O.3. The defence has adduced neither oral nor documentary evidence.

5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, after finding that the charges framed under Sections 302 and 506(2) IPC were not proved, convicted the petitioner for the offence under Section 306 IPC and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 6 months Simple Imprisonment. Aggrieved by the said judgment of conviction and sentence, the accused has come forward with the present Criminal Appeal along with the above miscellaneous petition for suspension of sentence.

6. The learned counsel appearing for the petitioner would submit that the trial Court, without considering the merits of the case, convicted the petitioner for the offence under Section 306 IPC, that the respondent police, without conducting any enquiry, registered a case against the petitioner, that the trial Court has failed to consider the material contradictions in the evidence of the prosecution witnesses, that the trial Court has failed to consider the report filed by the Forensic Department and that the trial Court, without any evidence or material, has convicted the petitioner for the offence under Section 306 IPC. He would further 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.

7. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the trial Court has elaborately



discussed the evidence of the prosecution witnesses, that the trial Court has given a specific finding that the charges under Sections 302 and 506(2) IPC were not proved, but considering the evidence available, the trial Court has rightly convicted the petitioner for the offence under Section 306 IPC and that therefore, the petitioner is not entitled to get any relief at this point of time.

8. As rightly contended by the learned Government Advocate (Criminal Side), the points now canvassed are matter for consideration in the main appeal.

9. The learned Government Advocate (Criminal Side) appearing for the respondent would further submit that there are enough materials available on record against the petitioner and hence, he strongly opposed to grant suspension of sentence.

10. Considering the above facts and circumstances and also the nature and gravity of the offence allegedly proved against the petitioner and the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner at this point of time.

11. In the result, this Criminal Miscellaneous Petition is dismissed.

sd/-
27/03/2023

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/04/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

csm

TO

1. THE II ADDITIONAL DISTRICT AND SESSIONS JUDGE,
THOOTHUKUDI DISTRICT
2. THE SUPERINTENDENT,
CENTRAL PRISON,
PALAYAMKOTTAI.
3. THE INSPECTOR OF POLICE
THENPAGAM POLICE STATION,
THOOTHUKUDI DISTRICT.



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Crl.M.P(MD)



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

ORDER
IN
Crl.M.P (MD) No.3803 of 2023
in
Crl.A. (MD) No.173 of 2023
Date :27/03/2023

ED/SSS/SAR-2 (03/04/2023) 4P/5C