



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

Thursday, the Twenty Second day of June Two Thousand and
Twenty Three

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PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

Crl.M.P (MD) Nos.6261 and 6584 of 2023
in
Crl.R.C. (MD) Nos.423 and 448 of 2023

1 MANIKANDAN @ MANI

2 MUTHUSELVAM

... PETITIONERS/PETITIONERS
IN CRL.MP (MD) .6261/2023

VALATHI @ ANJALI

... PETITIONER/PETITIONER/
APPELLANT/ACCUSED 2
IN CRL.MP (MD) .6584/2023

Vs

THE STATE REP.BY
THE INSPECTOR OF POLICE
THALAIYUTHU POLICE STATION,
TIRUNELVELI DISTRICT.

CR.NO.111/2022

... RESPONDENT/RESPONDENT/
IN CRL.MP (MD) .6261/2023

CR.NO.111/2022

... RESPONDENT/RESPONDENT/
RESPONDENT/COMPLAINANT
IN CRL.MP (MD) .6584/2023

Prayer in CRL MP(MD) . 6261/ 2023 in CRL.RC.423/2023:

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 upon us in CA No.93/2022 on the file of the IV Additional District and Sessions Judge, Tirunelveli dated 23.02.2023 confirming the conviction and sentence passed in CC No.887/2022 by the Judicial Magistrate No.III, Tirunelveli dated 22.11.2022 and enlarge them on bail pending disposal of the main Criminal Revision Case.

Prayer in CRL MP(MD) . 6584/ 2023 in CRL.RC.448/2023:

To Suspend the sentence imposed on the Petitioner in CC No.887/2022 on the file of Learned Judicial Magistrate No.III, Tirunelveli dated 22.11.2022 confirmed by the Learned IVth Additional Sessions Court Tirunelveli in CA No.91/2022 dated



23.02.2023 and enlarge the petitioner on bail pending disposal of the main Criminal Revision Petition.

Prayer in CRL RC(MD). 423/ 2023 :

To call for the records pertaining to the judgment of the Learned IV Additional District and Sessions Judge, Tirunelveli passed in C.A No.93 of 2022 dated 23.02.2023 confirming the conviction and sentence of the petitioner imposed by the Judicial Magistrate No.III, Tirunelveli in C.C.No.887 of 2022 dated 22.11.2022 and set aside the same.

Prayer in CRL RC(MD). 448/ 2023 :

To call for the records pertaining to the order passed in C.A No.91/2022 on the file of the learned IVth Additional Sessions Court, Tirunelveli dated 23.02.2023 confirming the Judgment dated 22.11.2022 passed in CC No.887/2022 on the file of the file of the learned Judicial Magistrate No.III, Tirunelveli and set aside the same.

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.LENIN KUMAR T, Advocate for the petitioner in CRL.MP(MD).6261/2023 and Mr.S.G.L.RISHWANTH, Advocate for Petitioner in CRL.MP(MD).6584/2023 and of Mr.SS.MADHAVAN, Government Advocate (crl.side) on behalf of the Respondent in both Petitions the court made the following order:-

RESERVED ON	12.06.2023
PRONOUNCED ON	22.06.2023

These Criminal Miscellaneous Petitions have been filed to suspend the sentence imposed on the petitioners/accused Nos.1, 3 and 2 by the learned Judicial Magistrate No.III, Tirunelveli, in C.C.No.887 of 2022, dated 22.11.2022, which was confirmed by the learned IV Additional District and Sessions Judge, Tirunelveli, in C.A.Nos.93 and 91 of 2022, dated 23.02.2023, till the disposal of these criminal revisions.

2. Admittedly, the petitioners in Crl.M.P.(MD)No.6261 of 2023 are the accused 1 and 3 and the petitioner in Crl.M.P.(MD)No.6584 of 2023 is the second accused.

3. The case of the prosecution is that on 29.04.2022 at about 03.00 p.m., when the defacto complainant and her friend were talking near to Saibaba Koil at Naranammalpuram Bridge, the petitioners along with other accused appeared before the defacto complainant in auto bearing Registration No.TN-72-L-1639 and threatened the defacto complainant and her friend and robbed Rs.30,000/- value of gold ornaments and two cellphone from them and that on the basis of the



complaint lodged by the defacto complainant, FIR came to be registered in Crime No.111 of 2022 for the offence under Section 392 IPC.

4. The respondent police, after completing the investigation, has filed the final report and the case was taken on file in C.C.No.887 of 2022 on the file of the Judicial Magistrate No.III, Tirunelveli.

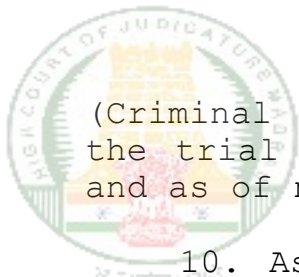
5. During trial, the prosecution has examined 7 witnesses as P.W.1 to P.W.7, exhibited 10 documents as Ex.P.1 to Ex.P.10 and marked 5 material objects as M.O.1 to M.O.5. The defence have adduced neither oral nor documentary evidence.

6. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the judgment dated 22.11.2022 convicting the petitioners for the offence under Section 392 IPC and sentenced them to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.10,000/- each, in default, to undergo 1 month Simple Imprisonment.

7. Aggrieved by the said judgment of conviction and sentence, the petitioners have preferred appeals in C.A.Nos.93 and 91 of 2022 and the learned IV Additional District and Sessions Judge, Tirunelveli, upon considering the evidence available on record and on hearing the arguments on both the sides, by confirming the conviction and sentence has dismissed the appeals vide judgment dated 23.02.2023. Challenging the judgment of the appellate Court, the accused 1, 3 and 2 have preferred the present revisions along with the above applications for suspension of sentence.

8. The learned counsel appearing for the petitioners in both the petitions would submit that the appellate Court failed to consider that there are lot of contradictions between P.W.1 and P.W.2 and they did not identify the case property exactly and that the above case has been registered against the petitioners and the other accused with sole intention to detain them under Act 14 of 1982, but the trial Court and the appellate Court have failed to consider that aspects. They would further submit that the alleged auto was stopped at the check post by the police and the properties were recovered and as such, it cannot be claimed to be recovered based on the confession from the second accused and the confession of the co-accused cannot be the basis for conviction, that the alleged arrest and recovery are sham and concocted, that the recovery mahazar witness P.W.4 would say that he did not witness the recovery, that there was no identification parade held and that the appellate Court, without considering the grounds raised and the evidence available on record, has mechanically dismissed the appeals.

<https://www.mhc.tn.gov.in/judis> rightly contended by the learned Government Advocate



(Criminal Side), the judgment of conviction and sentence by the trial Court has already been confirmed by the appellate Court and as of now, revisions are pending before this Court.

10. As already pointed out, the petitioners were awarded with punishment of 3 years Rigorous Imprisonment.

11. In the judgments of the trial Court as well as the appellate Court, it has been stated that the petitioners were arrested on 30.04.2022 and they were in judicial custody till 11.11.2022, 01.06.2022 and 11.08.2022 respectively. Recording the above period of judicial custody, the trial Court has ordered to set off the above period under Section 428 Cr.P.C. The appellate Court by confirming the judgment of the trial Court dismissed the appeals and further directed the trial Court to issue Non-Bailable Warrant and to execute the judgment of conviction.

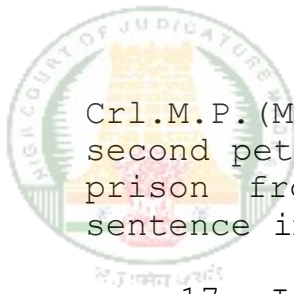
12. But the learned Government Advocate (Criminal Side) appearing for the respondent on instructions would submit that meanwhile the first petitioner/first accused in Crl.M.P.(MD)No.6261 of 2023 and the petitioner/second accused in Crl.M.P.(MD)No.6584 of 2023 were detained under Goondas Act on 21.05.2022 and both of them are in prison till now and whereas the second petitioner/third accused in Crl.M.P.(MD)No.6261 of 2023 was in judicial custody from 30.04.2022 till 01.06.2022 and subsequently on the date of appellate Court judgment on 22.11.2022, he was committed to prison to undergo the remaining sentence and he is in prison till now.

13. The learned counsel appearing for the petitioners in both the petitions would 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. They would further submit that the petitioners have already paid the fine amount.

14. This Court has carefully considered the rival contentions put forward by either side and also perused the materials available on record.

15. The learned counsel appearing for the petitioners in both the petitions pointed out that certain infirmities and inconsistencies in this case and also certain contradictions in material particulars. The fact remains that there are arguable points involved in this criminal revisions and further the criminal revisions are not likely to be taken up for final hearing in the near future and as such, this Court is of the considered view that the petitioners herein are entitled to the relief of grant of suspension of sentence.

16. Considering the above facts and circumstances of the case and also the fact that the first petitioner/first accused in Crl.M.P.(MD)No.6261 of 2023 and the petitioner/second accused in



Crl.M.P.(MD)No.6584 of 2023 are in prison from 30.04.2022. The second petitioner/third accused in Crl.M.P.(MD)No.6261 of 2023 is in prison from 22.11.2022, this Court is inclined to suspend the sentence imposed on the petitioners.

17. In the result, these Criminal Miscellaneous Petitions are allowed. Accordingly, the relief of suspension of sentence and bail is granted to the petitioners on the following conditions:-

(i) The petitioners shall execute a bond for a sum of **Rs.25,000/- (Rupees Twenty Five Thousand only)** each with two sureties each for a like sum to the satisfaction of the Judicial Magistrate No.III, Tirunelveli;

(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar card or Bank Pass Book to ensure their identity; and

(iii) The petitioners shall appear before the trial Court on all working days at 10.30 a.m., until further orders and if they are not able to appear before the trial Court on any day, they shall make arrangements to file an application under Section 317 of Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of their absence, as directed by the trial Court.

sd/-

22/06/2023

/ TRUE COPY /

23/06/2023

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

CSM

TO

1 THE JUDICIAL MAGISTRATE NO.III
TIRUNELVELI.

2 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, TIRUNELVELI.

3 THE IV ADDITIONAL DISTRICT & SESSIONS JUDGE,
TIRUNELVELI.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI.

5 THE INSPECTOR OF POLICE
THALAIYUTHU POLICE STATION,
TIRUNELVELI DISTRICT.



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

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+1. C.C. to M/S.LENIN KUMAR T Advocate SR.No.9467 (I) Dt.23/06/23

+1 cc to Mr.S.SABBANI KARPURA JOTHI, Advocate, SR.No.9512 (I)
Dt.23/06/23

ORDER IN

Crl.M.P (MD) Nos.6261 and 6584 of 2023
in

Crl.R.C. (MD) Nos.423 and 448 of 2023

Date :22/06/2023

SA/VR/SAR. /23.06.2023/6P/9C