



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

Monday, the Seventeenth day of April Two Thousand and Twenty Three

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PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.6023 of 2023
in
CRL A(MD) No.300 of 2023

1 ARUN

2 MARIAPPAN ... PETITIONERS/APELLANTS/ACCUSED No.2 & 3

Vs

THE STATE REPRESENTED BY
THE ASSISTANT COMMISSIONER OF POLICE,
TIRUNELVELI TOWN SUB DIVISION,
TIRUNELVELI TOWN POLICE STATION,
CRIME NO. 492 OF 2014 ... RESPONDENT/RESPONDENT/COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the execution of sentence by granting bail in S.C No. 38/2015 dated 30.03.2023 on the file of the Learned IInd Additional Sessions Judge (PCR), Tirunelveli district pending disposal of the above Criminal Appeal

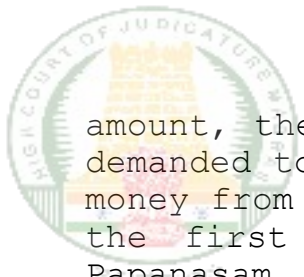
PRAYER in CRL A(MD) No.300 of 2023:

Pleased to admit this appeal on file, to call for the records from the Lower Court, namely, II Additional District and Sessions Court(PCR), Tirunelveli in S.C.No.38 of 2015 and aside the judgment dated 30.03.2023 by acquitting the appellants.

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.PRABHU.K, Advocate for the petitioner and of Mr.R.SIVAKUMAR, Government Advocate(Crl.side) on behalf of the Respondent while admitting the WA., the Court made the following order:-

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioners by the learned II Additional District and Sessions Judge, (PCR) Tirunelveli, in S.C.No.38 of 2015, dated 30.03.2023, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that one Papanasam had borrowed some money from the first accused and lent the same to several persons, that since the borrowers failed to repay the



amount, the said Papanasam filed a case, that the first accused had demanded to repay the amount, for which, the said Papanasam borrowed money from the defacto complainant and in turn he repaid the same to the first accused, that 7 months prior to this case the said Papanasam died, that thereafter, the first accused, without any reasons, had demanded money from the defacto complainant and that on 19.06.2014 at about 06.00 a.m., the petitioners and the other accused had demanded the defacto complainant to pay the amount due from the said Papanasam and had insulted him by dragging his community name and further, they assaulted him with wooden logs and also threatened him with dire consequences and on that basis, FIR came to be registered in Crime No.492 of 2014 for the offences under Sections 147, 148, 294(b), 307 and 506(2) IPC r/w Sections 3(1)(r) (s), 3(2)(va) and 3(2)(V) of SC/ST (POA) Act.

3. The respondent police, after completing the investigation, has laid the final report and the case was taken on file in P.R.C.No.1 of 2015 on the file of the learned Judicial Magistrate No.IV, Tirunelveli. Subsequently, the case was committed to the II Additional District and Sessions Judge, (PCR) Tirunelveli, in S.C.No.38 of 2015.

4. During trial, the prosecution has examined 17 witnesses as P.W.1 to P.W.17, exhibited 20 documents as Ex.P.1 to Ex.P.20 and marked 4 material objects as M.O.1 to M.O.4. The defence has exhibited 1 document as Ex.D.1.

5. The learned Sessions Judge, upon considering the evidence both oral and documentary and on hearing the arguments on both the sides, has passed the impugned judgment dated 30.03.2023 convicting the petitioners for the offence under Section 326 IPC and sentenced them to undergo 3 years Rigorous Imprisonment and to pay a fine of Rs.2,000/- each, in default, to undergo 3 months Simple Imprisonment each. The Trial Court has already suspended the sentence imposed on the petitioners till 30.04.2023. Challenging the above said conviction and sentence, the accused 2 and 3 have preferred the present Criminal Appeal along with the above miscellaneous petition for suspension of sentence.

6. The learned counsel appearing for the petitioners would submit that there are totally 7 accused, that when the case was pending trial, the accused 1 and 5 had died and hence, the charges as against them were ordered to be abated and that the trial Court has acquitted the accused 4, 6 and 7.

7. The learned counsel appearing for the petitioners 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. He would further submit that the petitioners have already paid fine amount.



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

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

10. The learned counsel appearing for the petitioners 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 appeal and further the criminal appeal is 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.

11. Accordingly, the relief of suspension of sentence 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 learned II Additional Sessions Judge (PCR), 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 concerned Court daily 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/-

17/04/2023

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/04/2023

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

TO

1 THE II ADDITIONAL SESSIONS JUDGE, (PCR), TIRUNELVELI.

2 THE ASSISTANT COMMISSIONER OF POLICE,
TIRUNELVELI TOWN SUB DIVISION,
TIRUNELVELI TOWN POLICE STATION



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

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+1 CC to M/s.K.PRABHU, Advocate (SR-5922[I] dated 17/04/2023)

ORDER

IN

CRL MP (MD) No.6023 of 2023
in

CRL A (MD) No.300 of 2023

Date :17/04/2023

SS/MMS/SAR III/20/04/2023/4P/5C