



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

Friday, the Twelfth day of May Two Thousand and Twenty Three

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PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.6847 of 2023
in
CRL A(MD) No.77 of 2023

HAMEED

(NOW CONFINED AS LIFE CONVICT IN
PALAYAMKOTTAI,CENTRAL PRISON)

... APPELLANT/ACCUSED NO.1

Vs

STATE THROUGH
THE INSPECTOR OF POLICE,
AATHOOR POLICE STATION,
THOOTHUKUDI DISTRICT
(CRIME NO.205 OF 2012)

... 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 Sentence imposed against the Appellant in S.C.No.59/2015 on the file of the Honourable Assistant Sessions Court Thiruchendur dt 22.12.2022 and release the appellant on bail till the disposal of the appeal.

PRAYER IN CRL A(MD) No.77 of 2023:-

To call for the entire records connected to the Judgement in S.C.No.59 of 2015 on the file of the Hon`ble Assistant Sessions Court, Thiruchendur dated 22.12.2022 and set aside the conviction and sentence imposed against the appellant.

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.ALAGUMANI.R, Advocate for the petitioner and of M/S.SIVAKUMAR R, Government Advocate (Crl. Side) on behalf of the Respondents the court made the following order:-



RESERVED ON	26.04.2023
PRONOUNCED ON	12.05.2023

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This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Assistant Sessions Judge, Tiruchendur, in S.C.No.59 of 2015, dated 22.12.2022, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that on 26.10.2012 at about 09.00 p.m., the defacto complainant Rahamathullah and other witness, namely, Kaleel Rahman questioned the petitioner/sole accused as to why he did not go for job in hotel after receiving the money, that over the above said enquiry, trouble arose and the petitioner had abused the defacto complainant in filthy language and had assaulted him with an intention to kill him by using brandy bottle, due to which, the defacto complainant sustained grievous injuries on the head, left hip region, etc., and that when that was sought to be intervened by the above said Kaleel Rahman, he was also assaulted and sustained injury on neck region and on that basis, FIR came to be registered in Crime No.205 of 2012.

3. The respondent police, after completing the investigation, has laid the final report against the petitioner for the offences under Sections 294(b), 307 and 506(2) IPC.

4. During trial, the prosecution has examined 11 witnesses as P.W.1 to P.W.11, exhibited 15 documents as Ex.P.1 to Ex.P.15 and marked 1 material object as M.O.1. The defence has examined 1 witness as D.W.1.

5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 22.12.2022 convicting the petitioner for the offences under Sections 307(2 counts) and 506(2) IPC and sentenced him to undergo 10 years Simple Imprisonment for each count and to pay a fine of Rs.5,000/- for each count, in default, to undergo 6 months Simple Imprisonment for each count for the offence under Section 307(2 counts) IPC and sentenced him to undergo 5 years Simple Imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo 3 months Simple Imprisonment for the offence under Section 506(2) IPC. Aggrieved by the said judgment of conviction and sentence, the accused has come forward with the present appeal.

6. No doubt, the petitioner's earlier application for similar relief seeking suspension of sentence was ordered to be dismissed by this Court vide order, dated 09.02.2023.



7. The learned counsel appearing for the petitioner would submit that P.W.1 in his evidence would say that he was attacked by the petitioner on 26.10.2012 at about 09.30 p.m. and after half an hour, P.W.2 came to the occurrence spot, but P.W.2 would say that he witnessed the incident by a distance of 50 meters and went to rescue his brother, that there are many contradictions in the evidence of P.W.1 and P.W.2 and no independent witnesses was examined to prove the alleged occurrence, that all the main witnesses were in inimical terms with the petitioner, that the prosecution has miserably failed to prove the place of occurrence before the trial Court, that P.W.11-investigating officer has failed to recover the blood strained soil from the occurrence place and blood strained clothes of P.W.1 and P.W.2 and that the prosecution has not offered any reason or explanation for registering the FIR with delay.

8. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that on the date of occurrence, by alleging that P.W.1 and P.W.2 assaulted the petitioner and caused injury, FIR came to be registered against them, that the petitioner, by breaking the brandy bottle, had attacked the P.W.1 and P.W.2 with broken bottle on their head, neck and other parts of the body and caused grievous injuries and that the learned trial Judge, upon considering the evidence available on record, has rightly come to the decision that the charges levelled against the petitioner for the offence under Section 307(2 counts) IPC were proved.

9. Considering the above facts and circumstances and also the nature and gravity of the offence allegedly proved against the petitioner and also the way in which two victims were attacked with broken bottle and the nature of injuries caused to them and also the fact that the impugned judgment was passed only on 22.12.2022 and the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner at this point of time.

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

sd/-
12/05/2023

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/05/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CSM



TO

- 1 THE ASSISTANT SESSIONS JUDGE, THIRUCHENDUR.
- 2 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI.
- 3 THE INSPECTOR OF POLICE
AATHOOR POLICE STATION,
THOOTHUKUDI DISTRICT
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.6847 of 2023
IN
CRL A (MD) No.77 of 2023
Date :12/05/2023

NA/VR/SAR-4/17.05.2023/4P/5C