



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

(Criminal Jurisdiction)

Friday, the Twenty Eighth day of April Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.11340 of 2022

in

CRL RC(MD)No. 915 of 2022

1 MUTHUPANDI

2 MADASAMY

... PETITIONERS/PETITIONERS

Vs

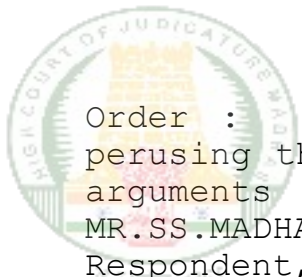
THE STATE REP BY,
THE INSPECTOR OF POLICE
ALWARKURICHI POLICE STATION,
ALWARKURICHI,
TIRUNELVELI DISTRICT.
CRIME NO.34 OF 2014.

... 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 imposed on the petitioners i.e A2 and A3 by the Judgment dated 15.07.2022 passed in C.A No. 48 of 2018 on the file of the 1st Additional District and Sessions Judge, Tirunelveli modifying the judgment dated 11.04.2018 passed in S.C.No. 621 of 2015, on the file Assistant Sessions Court, Ambasamuthiram and enlarge the Petitioners on bail, pending disposal of the above Criminal Revision Petition.

Prayer in CRL RC(MD). 915/ 2022 :

To call for the records of the Judgment dated 15.07.2022 passed in C.A No. 48 of 2018 on the file of the 1st Additional District and Sessions Judge, Tirunelveli modifying the judgment dated 11.04.2018 passed in S.C No. 621 of 2015 on the file of the Assistant Sessions Judge, Ambasamuthiram and set aside the same.



Order : This petition coming up for orders on this case, on perusing the petition filed in support thereof and upon hearing the arguments of MR.N.PRAGALATHAN, Advocate for the petitioner and of MR.SS.MADHAVAN, Government Advocate (Crl.Side) on behalf of the Respondent, the court made the following order:-

WEB COPY

RESERVED ON	21.04.2023
PRONOUNCED ON	28.04.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioners/accused 2 and 3 by the learned Assistant Sessions Judge, Ambasamudram, in S.C.No.621 of 2015, dated 11.04.2018, which was confirmed by the learned Additional District and Sessions Judge, Tirunelveli, in C.A.No.48 of 2018, dated 15.07.2022, till the disposal of this criminal revision.

2. The case of the prosecution is that due to previous enmity, on 02.03.2014 at about 08.00 p.m., the first accused and the petitioners/accused 2 and 3 went to the house of the defacto complainant, scolded him in filthy language, assaulted him by using sickle and also threatened him with dire consequences and on the basis of the complaint lodged by the defacto complainant, FIR came to be registered in Crime No.34 of 2014.

3. The respondent police, after completing the investigation, has filed the final report and the case was taken on file in P.R.C.No.85 of 2015 on the file of the Judicial Magistrate, Ambasamudram. Thereafter, the case was committed to the Court of Principal Sessions, Tirunelveli and subsequently, the case was made over to the Assistant Sessions Court, Ambasamudram in S.C.No.621 of 2015.

4. During trial, the prosecution has examined 18 witnesses as P.W.1 to P.W.18, exhibited 8 documents as Ex.P.1 to Ex.P.8 and marked 1 material object as M.O.1. The defence have examined 1 witness as D.W.1 and exhibited 1 document as Ex.D.1.

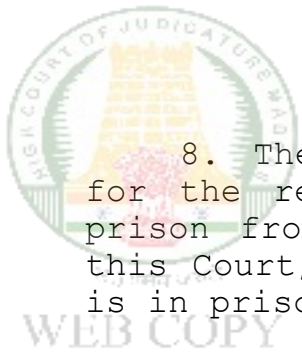
5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the judgment dated 11.04.2018 convicting the accused 2 and 3 and sentenced them as follows:-



Accused	Provision under which convicted	Sentence
A2-Muthupandi	under Section 452 IPC	to undergo rigorous imprisonment for 1 year and to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for 2 months
	under Section 326 IPC	to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for 2 months
A3-Madasamy	under Section 452 IPC	to undergo rigorous imprisonment for 6 months and to pay a fine of Rs.500/- in default to undergo simple imprisonment for 2 months

6. Aggrieved by the said judgment of conviction and sentence, the accused 1 to 3 have preferred an appeal in C.A.No.48 of 2018 and the learned I Additional District and Sessions Judge, Tirunelveli, upon considering the evidence available on record and on hearing the arguments on both the sides, has passed the impugned judgment dated 15.07.2022 partly allowing the appeal by confirming the judgment of the trial Court as against the accused 2 and 3 and modified the substantial sentence of the trial Court imposed on the second accused and the conviction of imprisonment for 3 years is altered to 1 year under Section 326 IPC. During the pendency of the appeal, the first accused had died and hence, the charges against the first accused were ordered to be abated. Challenging the judgment of the appellate Court, the accused 2 and 3 have preferred the present revision.

7. The learned counsel appearing for the petitioners would submit that the petitioners have not committed any offence as alleged by the prosecution, that the prosecution has failed to establish the case against the petitioners and the main case was projected only against the first accused, who was already dead and that the second petitioner is aged 64 years and is having health ailments and he could not have been able to walk without aid.



8. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the first petitioner is in prison from 24.01.2023 and that in pursuance of the direction of this Court, the second petitioner has surrendered on 10.04.2023 and is in prison.

9. As rightly pointed out by the learned counsel appearing for the petitioners, the punishment of 3 years rigorous imprisonment awarded to the first petitioner by the trial Court has been modified by the appellate Court and the same was reduced to 1 year rigorous imprisonment and that the second petitioner was convicted for the offence under Section 452 IPC and was sentenced to undergo 6 months rigorous imprisonment.

10. 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.

11. 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.

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

13. 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 revision 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.

14. Considering the above facts and circumstances of the case and also the fact that the petitioners are in prison from 24.01.2023 and 10.04.2023 respectively, this Court is inclined to suspend the sentence imposed on the petitioners.

15. In the result, this Criminal Miscellaneous Petition is 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 Assistant Sessions Court, Ambasamuthiram;

WEB COPY

(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/-
28/04/2023

/ TRUE COPY /

28/04/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

CSM
TO

- 1 THE I ADDITIONAL DISTRICT AND SESSIONS JUDGE,
TIRUNELVELI.
- 2 THE JUDICIAL MAGISTRATE,
AMBASAMUDRAM.
- 3 DO THROUGH:
THE CHIEF JUDICIAL MAGISTRATE,
TIRUNELVELI DISTRICT.
- 4 THE ASSISTANT SESSIONS JUDGE,
AMBASAMUTHIRAM.
- 5 THE PRINCIPAL SESSIONS JUDGE
TIRUNELVELI.
- 6 THE INSPECTOR OF POLICE
ALWARKURICHI POLICE STATION, ALWARKURICHI,
TIRUNELVELI DISTRICT.



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

+1 CC to M/s.N.PRAGALATHAN, Advocate (SR-6890[I] dated 28/04/2023)

WEB COPY

ORDER

IN

CRL MP(MD) No.11340 of 2022

in

CRL RC(MD)No. 915 of 2022

Date :28/04/2023

PKP/CG/SAR- /28.04.2023/ **6P/9C**