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

Friday, the Fifteenth day of September Two Thousand and Twenty Three
PRESENT

The Hon`ble Mr.Justice K.K. RAMAKRISHNAN

CRL MP(MD) No.13269 of 2023
in
CRL A(MD)No.851 of 2023

S.SURESH

... PETITIONER/ APPELLANT/ ACCUSED No.1

Vs

1 THE DEPUTY SUPERINTENDENT OF POLICE,
VIRUDHUNAGAR SUB DIVISION,
VIRUDHUNAGAR DISTRICT. ... 1st RESPONDENT/1st RESPONDENT/
INVESTIGATING OFFICER

2 THE STATE REPRESENTED BY
THE INSPECTOR OF POLICE
SULAKARAI POLICE STATION,
VIRUDHUNAGAR DISTRICT.
IN CRIME NO.292 OF 2017. ... 2nd RESPONDENT/2nd RESPONDENT/
COMPLAINANT

3 N.SELVARAJ ... 3rd RESPONDENT/3rd RESPONDENT/
DEFACTO COMPLAINANT

Criminal Miscellaneous Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to pass an order to suspend the execution of the substantial sentence passed against the petitioner in Spl.S.C.No.9 of 2018 dated 17.08.2023 on the file of the learned Special Judge for Trial of offences under S.C and ST(POA) Act, Virudhunagar District at Srivilliputhur and enlarge the Petitioner on bail pending disposal of the above Criminal Appeal.



PRAYER in CRL A(MD)No.851 of 2023:

To call for records pertaining to the Judgment dated 17-08-2023 passed by the Learned Special Judge for Trial of Offences under S.C. & S.T.(POA)Act, Virudhunagar District at Srivilliputhur, in Spl.S.C.No.9 of 2018 and set aside the same.

Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.MICHAEL BHARATHI.M, Advocate for the petitioner and of Mr.M.MUTHUMANIKKAM, Government Advocate(Crl.side) on behalf of the Respondents 1 & 2 while admitting the Criminal Appeal., the Court made the following order:-

This petition has been filed to suspend the sentence imposed on the petitioner by the learned Special Judge for Trial of offences under SC/ST (PoA) Act, Srivilliputhur, Virudhunagar District,pending disposal fo the above Criminal Appeal.

2. The case of the prosecution is that the petitioner and the complainant are neighbours. There was a dispute regarding draining the sewage water between them. While so, on 01.06.2017, the grand-sons of the complainant had gone to take bath in the public water tank. At that time, the petitioner and other accused restrained and scolded them with filthy language by using their caste name and assaulted them with sticks and stones, thereby caused injuries to them and hence, the defacto complainant lodged the complaint before the respondent police.

3. On receipt of the complaint, the respondent police registered a case in Crime No.292 of 2017 for the offences under Sections 294(b), 325, 506(i) of IPC, 4 of TNPWH Act, 1989, 3(1)(r)(s), 3(2)(va) of SC/ST (PoA) Act against the petitioner and under



Section 323 of IPC r/w 3(1)(r)(s), 3(2)(va) of SC/ST (PoA) Act against the other accused.

4. The respondent police, after completing the investigation, has laid a final report for the offences under Sections 294(b), 325, 506(i) of IPC, 4 of TNPWH Act r/w 3(1)(r)(s), 3(2)(va) of SC/ST (PoA) Act against the petitioner and under Section 323 of IPC r/w 3(1)(r)(s), 3(2)(va) of SC/ST (PoA) Act against the other accused. The same was taken on file in Spl.S.C.No.9 of 2018, on the file of the learned Sessions Judge, The Special Court for Trial of offences under SC/ST (PoA) Act, Srivilliputhur, Virudhunagar District.

5. During trial, the prosecution has examined 15 witnesses as P.W.1 to P.W.15 and exhibited 13 documents as Ex.P.1 to Ex.P.13 and marked 1 Material Object as M.O.1. However, neither a witness was examined nor a document was exhibited on the side of the accused.

6. The Special Court for Trial of offences under SC/ST (PoA) Act, Srivilliputhur, Virudhunagar District, after full-fledged trial, has passed the judgment in Spl.S.C.No.9 of 2018, dated 17.08.2023 and convicted the petitioner/accused for the offence under Section 325 r/w Sections 3(2) (va) of SC/ST (PoA) Act of IPC and sentenced him to undergo 4 years rigorous imprisonment and to pay a fine of Rs.3000/-, in default, to undergo 6 months Simple Imprisonment. Challenging the



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above said conviction and sentence, the petitioner preferred the Criminal Appeal before the Additional District and Sessions Judge, Virudhunagar in C.A.No.34 of 2015. However, the same was dismissed on 01.04.2022, thereby confirming the punishment imposed on the petitioner. Aggrieved over the above said conviction and sentence, imposed by the Courts below, the petitioner preferred the present Criminal Appeal along with the present Miscellaneous Petition seeking for suspension of sentence.

7. The learned counsel for the petitioner 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. Further he would submit that there is a delay in filing the FIR and the same was not properly explained. Further, the recovery of properties are not properly proved. He would further submit that the petitioner is confined on 17.08.2023 in Central Prison, Madurai. Hence, he seeks suspension of sentence.

8. The learned Government Advocate (Crl.Side) appearing for the respondent would submit that there are enough materials available on record against the petitioner and hence, he strongly opposed this petition.

9. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.



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10. The petitioner is said to have committed the offence under Sections 294(b), 325, 506(i) of IPC, 4 of TNPWH Act r/w 3(1)(r)(s), 3(2)(va) of SC/ST (PoA) Act. The dispute is only regarding the draining the sewage water and there is a delay in filing the FIR, which has not been properly explained and the case of the petitioner regarding the certain infirmities and inconsistencies in this case and also certain contradictions in material particulars to be looked in detail in the appeal. So this Court *prima facie* satisfied 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 petitioner herein are in custody from 17.08.2023 in Central Prison, Madurai, hence, the petitioner is entitled to the relief of grant of suspension of sentence.

11. Accordingly, the relief of suspension of sentence is granted to the petitioner on the following conditions:-

(i) The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties each for a like sum to the satisfaction of the learned Special Judge, Special Court for Trial of offences under SC/ST (PoA), Act, Srivilliputhur, Virudhunagar District.

(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

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(iii) The petitioner shall appear before the concerned Court once in a month i.e., on first working day of every English calendar month at 10.30 a.m., till the disposal of the appeal.

sd/-

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15/09/2023

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

SBN

TO

- 1 THE SPECIAL JUDGE
FOR TRIAL OF OFFENCES UNDER SC AND ST(POA)ACT,
VIRUDHUNAGAR DISTRICT AT SRIVILLIPUTHUR.
- 2 THE DEPUTY SUPERINTENDENT OF POLICE,
VIRUDHUNAGAR SUB DIVISION,
VIRUDHUNAGAR DISTRICT.
- 3 THE INSPECTOR OF POLICE
SULAKARAI POLICE STATION,
VIRUDHUNAGAR DISTRICT.
- 4 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.



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COPY TO:

THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI. (CALL FOR THE ORIGINAL RECORDS)

+ 1 CC TO Mr.V.SASI KUMAR, ADVOCATE IN SR No.13835 DATED 19/09/2023

ORDER
IN
CRL MP(MD) No.13269 of 2023
in
CRL A(MD)No.851 of 2023
Date :15/09/2023

SS/15/09/2023/7P/8C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17/07/2023