



*Crl.M.P.No.3223 of 2024
in Crl.A.No.211 of 2024*

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M. NIRMAL KUMAR, J.

This Criminal Miscellaneous Petition has been filed by the petitioners, seeking suspension of sentence of imprisonment imposed by the learned Additional Sessions Judge, Krishnagiri by judgment dated 30.01.2024 made in Special S.C.No.43 of 2019 and enlarge the petitioners on bail pending disposal of the above appeal.

2.The petitioners, who are the accused Nos.1, 2 and 7 convicted by the Trial Court in S.C.No.43 of 2019 by judgment dated 30.01.2024, have filed this appeal. The first petitioner/A-1 was found guilty for the offence under Section 147 of IPC and directed to pay fine of Rs.1,000/-, in default, to undergo simple imprisonment for one month. Further, for the offence under Section 4 of TNPPDL Act and sentenced to undergo rigorous imprisonment for three years and to pay fine of Rs.1,000/-, in default, to undergo simple imprisonment for one month. The second



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petitioner/Accused No.2 was found guilty under Section 148 of IPC and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment. The third petitioner/Accused No.3 was found guilty under Section 148 of IPC and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment. Further, for the offence under Section 324 of IPC and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs.1,000/-, in default, to undergo one month simple imprisonment. Against which, the present appeal is filed along with suspension of sentence.

3.The contention of the learned counsel for the petitioners is that during the trial the petitioners were tried along with five others. In this case, A-3, A-5, A-6 and A-8 were found guilty under Section 147 of IPC and to pay fine of Rs.1,000/- each, in default, to undergo simple imprisonment for one month each. He further submitted that in this case P.W-1 to P.W-4, who are the injured and eye witnesses to the occurrence, are Accused in Crime No.510 of 2013 which culminated into S.C.No.174 of



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2016 and all were convicted for various offences including the offence under Section 302 of IPC and sentenced to life imprisonment by judgment dated 30.01.2024. The case of the petitioners is that it is the P.W-1 to P.W-4, who are the aggressors, have picked up a fight and attacked the petitioners and others. There was exchange of free-flow and it was the P.W-1 to P.W-4 who had inflicted the injuries on the petitioners as well as done away one Muniyappan and also set fire which caused damage to the public properties. Hence, they were convicted in S.C.No.174 of 2016. This being so, the trial Court ought to have acquitted the petitioners since they are only the victims who have received blows and injuries at the hands of P.W-1 to P.W-4. The complaint on the side of the petitioners is earlier to the complaint of the present case which fact has not been considered by the trial Court. He further referring to the judgment in S.C.No.174 of 2016 submitted that the second and third petitioner were examined as P.W-3 and P.W-6 in that case. In such circumstances, conviction of the petitioners is not proper. Hence, he prayed for suspension of sentence.

4.The learned Additional Public Prosecutor filed his counter stating



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that on 04.11.2013 at about 02.00 hours, the de-facto complainant namely Tr.Pachaiyappan, lodged a complaint before the respondent police by stating that he is doing agriculture. The accused are residing adjacent to their house. He further states that they are jointly doing agriculture and Govindasamy has got a common path through which he has to take water but the said Govindasamy not utilizing the said common path but was using the land belonging to the complainant. In spite of the said matter was reported to the said person they did not mend their ways. On 02.11.2013 there was a path way dispute on the next day after distributing the marriage invitation card of Suriya around 5 to 6 PM, they came to the house at the time Balamurugan/A2 who parked his Omni vehicle was sounding horn and the complainant questioned why he is sounding in horn. At the time, A2 stated that he will blow the horn and further stated that he will be murdered within 10 days time. Then further intimidated the complainant that he will see how the marriage is going to be celebrated and abused him in obscene language, at the time Suriya came and asked A2 why he was creating problem, at the time A2 stated that he will stop the marriage, thereafter the complainant's brother was being attacked by Balamurugan/A2, Murugan/A7



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& Thangam/A8 with a wooden log over his jaw, back and also on chest.

Thereafter, the complainant also attacked by Murugan/A7 & Thangam/A8 with crowbar on his left leg. The complainant sustained bleeding injuries.

Thereafter, Gowrammal came to the place and asked why he was attacking, thereafter house was being attacked with stone, wooden log and crowbar.

A2 initially attacked house and broken the glasses. In the course of same transaction, when Prabhu was there A4/Salammal attacked him with a stone.

Thereafter, A5/Sivaraj and A6/Muthappa asked the A1 to set fire the two wheelers, Raja/A1 poured petrol on the two wheelers bearing Reg. No. TN-24-C-0905 Platina vehicle and another vehicle bearing Reg. No. TN-24-E-9933 Super Splendor vehicle and destroyed it. The accused Vanitha/A3 with a stone attacked the window panels of the complainant's house. Hence, the complaint.

5. It is submitted that based on the above complaint, a case was registered in Krishnagiri Taluk P.S., in Crime No.511 of 2013, U/s.147, 148, 294(b), 323, 324, 506(ii), 307 r/w 109 IPC & 3 and 4 of TNPPDL Act on 04.11.2013 at about 02.00 hours by Tr.S.Veeramani, the then Sub



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Inspector of Police and he took up the case for further investigation. During the course of investigation, the then Sub Inspector of Police have went to the scene of occurrence, prepared observation mahazar, drew the rough sketch and also seized case properties from the scene of occurrence under cover of seizure mahazar in the presence of witnesses and also examined the witnesses and recorded their statements. Further, during the course of investigation, on 05.11.2013, the then Sub Inspector of Police have arrested the accused persons A1, A5 to A8 and obtained their confession statements and then they were produced before the Judicial Magistrate No.II, Krishnagiri and remanded to judicial custody.

6. After completion of detailed investigation, on 26.05.2014, Tr.Jaishankar, the then Inspector of Police have filed the charge sheet against the accused persons A1 to A8 before the Judicial Magistrate No.II, Krishnagiri and the same was taken on file vide PRC.No.23/2018. Then, this case was committed before Additional Sessions Judge, Krishnagiri and assigned S.C.No.43/2019. The trial court framed charges against the accused. During trial, the prosecution has examined 12 witnesses and



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marked 12 exhibits and identified 4 material objects to prove the case. On the side of the defence, no witnesses examined and no documents marked. On conclusion of trial, the trial Court rightly convicted the petitioners as stated above. Hence, prays for dismissal.

7.Considering the submissions made and on perusal of the materials, it is seen that the petitioners have been attacked by P.W-1 to P.W-4 and the case in Crime No.510 of 2013 had been registered which culminated into S.C.No.174 of 2016 and they have been convicted to life sentence. The second and third petitioners herein are examined as P.W-3 and P.W-6 in that case. Once P.W-1 to P.W-4 have been convicted on the evidence of the petitioners, the conviction of the petitioners needs re-look and re-consideration. The Sentence of Imprisonment imposed on the petitioners have already been suspended till 15.03.2024. Hence, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the appeal.



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8. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioners is suspended till the disposal of the appeal and the petitioners are ordered to be enlarged on bail, on condition that each of the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Additional Session Judge, Krishnagiri.

9. Further, the petitioners shall appear before the Trial Court on the first working day once in three months at 10.30 a.m. until the disposal of the appeal and if they are not able to appear before the Trial Court on that day, they shall make arrangements to file an application under Section 317 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.

10. Accordingly, this Miscellaneous Petition is ordered.

12.03.2024

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To

- 1.The Inspector of Police,
Krishnagiri Taluk Police Station,
Krishnagiri District.
- 2.The Additional Sessions Judge,
Krishnagiri.
- 3.The Public Prosecutor,
High Court, Madras.



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