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CrLMP.No.17028/2023 in CrL.A.No.1191/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.02.2024

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH
AND

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrLMP.No.17028/2023 in CrL.A.No.1191/2023

Vijayaraj

..

Petitioner

Versus

The State rep by,
The Inspector of Police,
Tiruvannamalai Town Police Station
(Ref.Cr.No.1051/2012, dated 07.07.2012)

..

Respondent

Prayer:-Civil Miscellaneous Petition filed under Section 389[1] of Cr.P.C., to set aside the order of conviction and sentence dated 23rd January 2023 passed by the Principal District and Sessions Judge, Thiruvannamalai in S.C.No.14/2014, convicting the appellant u/s 302 r/w 149 IPC and imposing the sentence of life imprisonment and with fine of Rs.3,000/- in default 2 years rigorous imprisonment and under Section 341 IPC, 1 month simple imprisonment and acquit the appellant.



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For Petitioner : Mr.S.Sheik Ismail

For Respondent : Mr.E.Raj Thilak,
Additional Public Prosecutor
assisted by
Mr.C.Aravind

ORDER

[Order of the Court was made by SUNDER MOHAN, J]

The petitioner, who is Accused No.8 in S.C.No.14 of 2014 on the file of the learned Principal Sessions Judge (FAC), Thiruvannamalai, stands convicted for the offence under Sections 341, 302 read with Section 149 IPC and sentenced to undergo life imprisonment with fine of Rs.3,000/-, in default to undergo rigorous imprisonment for a period of two years for the offence under Section 302 r/w 149 IPC, and to undergo one month simple imprisonment for the offence punishable under Section 341 IPC, which are ordered to run concurrently, vide the judgement dated 23.01.2023 passed by the trial Court. Challenging the said conviction and sentence, the petitioner has filed the above appeal. The present Miscellaneous Petition has been filed to suspend the sentence and enlarge him on bail, pending the above appeal.



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2. It is the case of the prosecution that due to prior enmity, A1 to A10 conspired to do away the deceased; that pursuant to the said conspiracy, on 02.07.2012, at about 6.00 a.m., A1 to A4 went to the scene of occurrence; that A8 to A10 were asked to inform the movement of the deceased to the other accused.

3. Heard the learned counsel for the petitioner [A8] and Mr.E.Raj Thilak, the learned Additional Public Prosecutor appearing for the respondent/State.

4. Learned counsel for the petitioner [A8] submitted that even according to the prosecution, A8 was not present in the scene of occurrence and was not responsible for causing the death of the deceased; that there is no evidence to establish conspiracy and the witnesses examined by the prosecution to prove the alleged conspiracy, turned hostile; that there is no evidence to suggest that A8 was involved in the offence.



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5. The learned Additional Public Prosecutor, per contra, submitted that the prosecution has established the case beyond reasonable doubt and the learned trial Judge had considered all the circumstances to hold that the petitioner is guilty of conspiracy and for screening the evidence.

6. We have carefully considered the submissions made on either side. We find from the judgment of the trial Court and from the evidence on the record that there is no evidence to establish that the petitioner conspired to do away the deceased along with the other accused. P.W.2, P.W.3, P.W.4, P.W.6, P.W.8 and P.W.12 turned hostile. P.W.1., the wife of the deceased speaks about the participation of A1 to A4 in the occurrence and the subsequent lodging of the complaint, Ex.P1. Since there is no other evidence against the petitioner, we are of the view that the petitioner has a fair chance of success in the appeal. Hence, we are inclined to grant the relief of suspension of sentence to the petitioner herein.

7. Accordingly, this criminal miscellaneous petition stands **allowed** and the sentence of imprisonment is **suspended** and the sentence imposed



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on the petitioner is suspended on the following conditions:

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- (i) The petitioner shall execute a bond for a sum of Rs.25,000/-, with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Principal District and Sessions Judge, Tiruvannamalai (FAC);
- (ii) The petitioner and 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 and mobile numbers to ensure their identity; and
- (iii) The petitioner shall appear before the trial Court on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the trial Court on any day, he 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 his absence, as directed by the trial Court.

[M.S.R.,J.] [S.M.,J.]
16.02.2024
(1/2)

Anu

Issue order copy by 19.02.2024
Upload the order copy forthwith.



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M.S.RAMESH, J
and

SUNDER MOHAN, J

Anu

To

1.The Principal District and Sessions Judge,
Tiruvannamalai (FAC).

2.The Inspector of Police,
Tiruvannamalai Town Police Station.

3.The Superintendent of Prisons,
Central Prison, Vellore.

4.The Additional Public Prosecutor,
Madras High Court,
Chennai – 600 104.

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