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Crl.M.P.No.17150 of 2023 in Crl.R.C.No.1810 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.17150 of 2023
in Crl.R.C.No.1810 of 2023

1.Dhanam,
W/o.Thangavel.

2.Sumathi,
D/o.Thangavel,
(Legal heirs of deceased Thangavel),
Both are residing at
Thittacheri, Ladhuvadi Post,
Thalaivasal Taluk, Salem District.

3.Kannupaiyan,
S/o.Angusamy.

... Petitioners

Vs.

The State Represented by
Inspector of Police,
Attur Police Station, Salem District.
Crime No.55/2014.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C., to suspend the sentence of the 3rd petitioner herein imposed by the learned Judicial Magistrate No-2, Salem in C.C.No.386/2014, on 19.082020 pending disposal of the revision petition.



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For Petitioners : Mr.M.Sridhar & Ms.G.R.Sreemagal
For Respondent : Mr.C.E.Pratap,
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence of the 3rd petitioner herein imposed by the learned Judicial Magistrate No.II, Salem in C.C.No.386 of 2014, dated 19.08.2020 confirming the judgment of the learned I Additional District and Sessions Judge, Salem (lower appellate Court) in Crl.A.No.59 of 2020, dated 14.06.2023.

2.The conviction and sentenced imposed by the trial Court against the 3rd petitioner/A2 and other accused is as follows:

- For offence under Section 381 of IPC, A1 to undergo three years Simple Imprisonment and to pay a fine of Rs.100/- in default to undergo three months Simple Imprisonment.
- For offence under Section 457 of IPC, A2 & A4 to undergo one year Simple Imprisonment each and to pay a fine of Rs.100/- each in default to undergo three months Simple Imprisonment each.
- For offence under Section 380 of IPC, A2 & A4 to undergo three years Simple Imprisonment each and to pay a fine of Rs.100/- each in



default to undergo three months Simple Imprisonment each.

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Challenging the trial Court judgment, A1 and A2 filed Crl.A.No.59 of 2020 before the learned I Additional District and Sessions Judge, Salem (lower appellate Court). The lower appellate Court *vide* judgment, dated 14.06.2023 dismissed the appeal confirming the judgment of the trial Court.

3.The learned counsel for the petitioner submitted that the petitioner has been falsely implicated in this case and he has not committed any offence as alleged by the prosecution. A1, Night Watchman in Fast Track Court, Judicial Magisterial Level, Attur said to have removed wooden planks from the property room and handed over the same to the 3rd petitioner/A2 and the same was transported in the vehicle of A4 which was driven by A3. A1 and A3 are friends, who had been in tandem in removing the wooden planks. These wooden planks is said to have been recovered near the house of the petitioner. He further submitted that in this case, for recovery and seizure, PW2 and PW4 are projected as witnesses. PW3 is the Village Administrative Officer, Bothanaikampalayam, Salem District and PW4 is the Village Assistant, in whose presence on 25.01.2014, the wooden



planks seized which marked as MO1 and MO2. PW3 stated that when he had gone to the petitioner's house, he saw the respondent Police making enquiry with the petitioner and seizure has been made. On the other hand, PW4 state that he along with PW3 had gone to the Police Station, from there, they had accompanied Police to the house of the petitioner. Added to it, the case against the petitioner is on the basis of the confession of A1. In this case, the defacto complainant not examined as witness.

4.He further submitted that there is doubt with regard to the manner in which the recovery of MO1 and MO2 made, the witnesses not stated any specific identification with regard to missing/stolen from the Court are wooden planks and about the same seized in the petitioner's house. Added to it, the property room is easily accessible. In view of the same, the recovery is highly doubtful and there is no incriminating material against the petitioner. The trial Court as well as the lower appellate Court misread the evidence and materials and proceeded on a preconceived notion that the petitioner had committed the offence since some of the wooden planks found missing from the property room of the Court. The petitioner/A2 had surrendered before the trial Court on 08.12.2023 and he is confined in the



Central Prison, Salem.

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5.The learned Government Advocate (Crl. Side) appearing for the respondent Police submitted that A1 since deceased was working as Night Watchman at Fast Track Court, Judicial Magisterial Level, Attur. The defacto complainant was working as Head Clerk in the said Court. On 25.01.2014, at about 02.00 p.m., when the defacto complainant went to rest room situated adjoining to the District Jail, he noticed the door of the property room was opened. On suspicious, when he entered into the room, the wooden planks were found either stolen or missing. Immediately, the defacto complainant lodged a complaint to the learned Judicial Magistrate, Fast Track Court, Attur and the same was forwarded to the respondent Police. The respondent Police received the complaint (Ex.P13), registered FIR (Ex.P11) in Crime No.55 of 2014 for offence under Sections 457, 381, 380 r/w 34 of IPC. Thereafter, the Inspector of Police took up the investigation, visited the scene of occurrence on 25.01.2014, prepared Observation Mahazar (Ex.P9), Rough Sketch (Ex.P12) in presence of witnesses, seized the broken bricks, cement mixer, five nails and a wooden piece in presence of the Village Administrative Officer under Seizure



Mahazar. Thereafter, the respondent Police arrested A1 and A2 in front of the house of A2, recorded their confession statements, recovered Rs.500/- from A1 and ten wooden planks from A2 in presence of witnesses. On further investigation, the respondent Police arrested A3 and A4 on 30.01.2014 and remanded all the accused. Thereafter, on collection of evidence and material, charge sheet filed before the trial Court. During trial, on the side of the prosecution, eight witnesses examined as PW1 to PW8 and thirteen documents marked as Exs.P1 to P13. The trial Court on evidence and materials convicted the petitioner as stated above and the same was confirmed by the lower appellate Court. He further submitted that during the pendency of the appeal before the lower appellate Court, A1 died on 07.05.2022. Now, challenging the conviction and sentence of A1, A1's wife and daughter are before this Court as petitioners 1 and 2.

6.Considering the submissions and on perusal of the materials, it is seen that the case against the petitioner/A2 is that he received the missing/stolen wooden planks the property of the Magistrate Court. The stolen goods alleged to have been seized near the petitioner's residence in presence of PW3 and PW4. In this case, the evidence of PW3 and PW4



evidence are in contradictory with regard to the manner in which they reached the scene of occurrence and seizure made. The other incriminating circumstances against the petitioner is the confession of A1. There is discrepancy with regard to the manner in which the recovery of MO1 and MO2 made and the witnesses not stated any specific identification with regard to missing/stolen wooden planks from the Court and the same were seized in the petitioner's house.

7.In view of the above, this Court is inclined to suspend the sentence of the petitioner till the disposal of the main criminal revision. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the criminal revision and the petitioner is ordered to be enlarged on bail, on condition that he 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 trial Court.

8.Further, the petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m. until the disposal of the criminal revision and if he is not able to appear before the



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Trial Court on that 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.

9. Accordingly, this Miscellaneous Petition is ordered.

08.02.2024
(2/3)

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Note: Issue Order Copy on 08.02.2024.

To

1. The I Additional District and Sessions Judge,
Salem.
2. The Judicial Magistrate No.II,
Salem.
3. The Inspector of Police,
Attur Police Station,
Salem District.
4. The Superintendent of Police,
Central Prison, Salem.
5. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR., J.

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