



CRL MP(MD) No.803 of 2024

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

Monday, the Nineteenth day of August Two Thousand and Twenty Four

PRESENT

The Hon`ble Mr.Justice C.V.KARTHIKEYAN
and
The Hon`ble Mr.Justice J.SATHYA NARAYANA PRASAD

CRL MP(MD) No.803 of 2024
in
CRL A(MD)No.72 of 2024

SENTHILKUMAR ... PETITIONER/ APPELLANT/ ACCUSED No.2

Vs

THE INSPECTOR OF POLICE
VACHAKKARAPATTI POLICE STATION,
VIRUDHUNAGAR DISTRICT.
CRIME NO.299 OF 2015. ... RESPONDENT/RESPONDENT/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 Suspend the conviction and sentence passed in Sc.No.93 of 2017 dt.11.12.2023 on the file of the Honble Additional District and Sessions Court, Virudhunagar enlarge the Petitioner on bail pending disposal of the Criminal Appeal.

PRAYER in CRL A(MD)No.72 of 2024:

To call for the records from the file of the trial Court/ Additional District and Sessions Court, Virudhunagar and set aside the judgment of the trial Court passed in S.C.No.93/2017 dated 11th December, 2023 by allowing this appeal and acquit the Appellant/ Accused.



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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.GOPALAN T.K., Advocate for the petitioner and of on behalf of the Respondents the Court made the following order:-

The 2nd accused, in S.C.No.93 of 2017 on the file of the Additional Sessions Court, Virudhunagar, who was convicted for the offence under Section 302 IPC to undergo life imprisonment and to pay fine of Rs.5,000/-, in default to undergo rigorous imprisonment for three months; under Section 302 r/w 34 IPC to undergo life imprisonment and to pay fine of Rs.5,000/-, in default to undergo rigorous imprisonment for three months; under Section 341 IPC to undergo simple imprisonment for one month and under Section 294(b) IPC to undergo simple imprisonment for one month, has filed the present application, seeking suspension of sentence.

2.The judgment of the learned trial Judge was dated 11.12.2023.

3.It is the case of the prosecution that the 1st accused, namely, Muthaiah alias Muthaiah Naicker and the present petitioner / 2nd accused, namely, Senthilkumar are father and son. The three persons, namely, Mohan (deceased), Parameswaran (deceased) and P.W.1 Kannan were consuming alcohol at R.R.Nagar TASMACH shop on 02.08.2015. It is the further case of the prosecution that the accused had a motive,



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since the 1st deceased Mohan had illicit relationship with the daughter of the 1st accused and owing to that on that particular date, the 1st accused attacked Mohan and he died, after running away for some distance. The petitioner / 2nd accused had stabbed the 2nd deceased Parameswaran on the right side of his abdomen. P.W.1 also suffered injuries in his hand. That injury was caused by the 1st accused.

4.It is also seen from the records that the 1st accused died even during the course of trial. Therefore, the charge against the 1st accused, causing death of the 1st accused and causing injuries to P.W.1, stood abated. So far as the 2nd deceased Parameswaran is concerned, he was admitted in the hospital on 02.08.2015 and after treatment, he died on 06.08.2015.

5.It is pointed out by the learned Additional Public Prosecutor for the respondent that on 02.08.2015 itself at around 04.00 p.m., his statement was recorded, which was reduced in writing and that was taken as a complaint and First Information Report was registered at 08.00 p.m., on the same date and copy of which was also received by the jurisdictional Magistrate at 01.45 a.m., on 03.08.2015.

6.It is further contended by the learned Additional Public Prosecutor that there



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is no time gap between the time of occurrence, lodging complaint, registration of FIR and receipt of the copy of the FIR by the learned Judicial Magistrate. However, it is contended on behalf of the petitioner that both Paraameswaran and P.W.1, who were initially given treatment by P.W.23 Doctor, had informed the Doctor that they were assaulted by two unknown persons. It is further contended that the test identification parade has not been conducted to identify the accused.

7.The learned Additional Public Prosecution pointed out the observation made in the judgment that P.W.1 injured witness had identified the 2nd accused / the present petitioner in Court. But, it is seen that the trial was protracted and though the incident happened in the year 2015, the judgment was delivered only in the year December, 2023 and though the statement of Parameswaran was recorded in the hospital and that was marked as Ex.P.20, the learned trial Judge had discarded P.W.20 holding it was nothing but prepared one. It was also stated that it is the exact translated copy of Ex.P.1 complaint and therefore, Ex.P.20 was totally discarded.

8.Parameswaran had unfortunately died and therefore, it is an arguable point as to whether the complaint lodged by him could be treated as dying declaration or would not have any evidentiary value at all. That is an issue, which has to be



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argued and it is therefore, insisted by the learned counsel for the petitioner that there are some points to argue.

9.Further, the fact that the deceased Parameswaran and P.W.1 had informed the Doctor that they were assaulted by two unknown persons, brings about the necessity or otherwise to conduct test identification parade. It is also on record that they did not know either the 1st accused or the 2nd accused prior to the incident. The evidentiary value of conducting test identification parade is an arguable point. But still the fact is that the Investigating Officer had not conducted test identification parade atleast through P.W.1. Parameswaran, who was in hospital, could not even have possibly attended the test identification parade. It is also seen that so far as the petitioner is concerned, he was working in the Army and therefore, it could also be argued that the 1st accused / father was the prime motivator for the offence and this petitioner could have only accompanied with him to the TASMACH shop, where both the deceased and P.W.1 were consuming liquor.

10.Taking all these facts and circumstances, we are inclined to entertain this petition and to suspend the sentence imposed against the petitioner. Accordingly, this petition is ordered and the imprisonment ordered by the trial Court through the impugned judgment is suspended subject to 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 Additional District and Sessions Court, Virudhunagar;

(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 petitioner shall appear before the concerned Court on every alternative Monday at 10.30 a.m., until further orders 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.

sd/-
19/08/2024

/ TRUE COPY /

20/08/2024
Sub-Assistant Registrar()
Madurai Bench of Madras High Court,
Madurai - 625 023.

YUVA

TO

1 THE ADDITIONAL DISTRICT AND
SESSIONS JUDGE, VIRUDHUNAGAR.



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2 THE INSPECTOR OF POLICE
VACHAKKARAPATTI POLICE STATION,
VIRUDHUNAGAR DISTRICT.

3 THE SUPERINTENDENT
CENTRAL PRISON, MADURAI.

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

+1 CC to M/s.T.K.GOPALAN, Advocate (SR-10078[I] dated 19/08/2024)

ORDER
IN
CRL MP(MD) No.803 of 2024
in
CRL A(MD)No.72 of 2024
Date :19/08/2024

SS/GS/SAR- /20/08/2024/7P/6C

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