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SLP(Crl.)No. 4568 OF 2004

ITEM No.33

Court No. 7

SECTION II
A/N MATTER

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl.) No. 4568/2004.

(From the judgement and order dated 14/01/2004 in CRLR 6/03
of The HIGH COURT OF CALCUTTA)

T. GURUMURTHY

Petitioner (s)

VERSUS

STATE THROUGH CHIEF SECRETARY, U.T. OF ANDAMAN & NICOBAR Respondent (s)

[With Appln(s). for stay and Office Report]

Date : 11/03/2005 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE P.V. REDDI
HON'BLE MR. JUSTICE A.K. MATHUR

For Petitioner (s)Mr. Yatendra Sharma, Adv.
Mr. Satyajit Saha, Adv. for
Mr. Prashant Kumar,Adv.

For Respondent (s)Mr. Ashok Bhan, Adv.
Ms. Varuna Bhandari Gugnani, Adv. for
Mr. D.S. Mahra,Adv.

UPON hearing counsel the Court made the following
O R D E R

Leave granted.

The Criminal Appeal is disposed of in terms of the Signed Order.

(Subhash Chander) (Pushap Lata Bhardwaj)
Court Master Court Master

[Signed Order is placed on the file]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.406 OF 2005
[Arising out of S.L.P.(Crl.)No.4568 of 2004]

T. Gurumurthy.....Appellant

Versus

State Through Chief Secretary, U.T.
Of Andaman & Nicobar.....Respondent

O R D E R

Leave granted.

The appellant, who was driver of a truck bearing Registration No.AN 4196, was convicted for the offence under Section 304A and 279 of the Indian Penal Code and he was sentenced to one year's imprisonment under Section 304A, IPC out of which, we are informed that he has served the sentence to the extent of about 5 months. The notice in SLP was issued confined to the quantum of sentence. Even on the point of sentence, we would not have, in the normal course, interfered with the sentence imposed but for certain supervening circumstances brought out in the additional affidavit filed by the appellant which have been verified by the concerned authorities of the respondent. The relevant averments in the affidavit are as follows :

"That the Petitioner in the present Petition has a family of four members consisting of wife Smt. T. Varalaxmi and three sons namely, T. Vasudev, T. Umapathi & T. Loknath. The eldest son T. Vasudev is aged about 30 years and since his marriage he is residing separately with his own family and does not keep any relations with the petitioners. The second son T. Umapathi i.e. the deponent is aged about 23 years and doing his B.Com final from Jawaharlal Nehru Rajkeeya Mahavidyalaya, Port Blair.

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I say that the wife of the petitioner and my mother along with her youngest son aged about 18 years was residing at Katchal Island under Nicobar District in a Government quarter allotted to the petitioner when the disaster of Tsunami tidal waves attacked on 26-12-2004. I say that the Katchal Island is one of the most affected Islands in the disaster and wife of the Petitioner and his youngest son namely T. Loknath, who was studying there in class XI, are not traceable nor their dead bodies are recovered till date. As on date I am the only surviving dependent son of the Petitioner. I further say that the house and households are also washed away by the tidal waves. Presently I am left in complete destitution having neither parents nor brother nor any source of livelihood and shelter. My father and I have lost every thing.'

In view of the calamity which has overtaken the appellant and his family it would not be appropriate and proper to direct the appellant to serve the sentence for further period. The sentence already undergone shall be treated as substantive punishment and in addition thereto we direct that the appellant shall pay a fine of Rs.5,000/- (Rupees Five Thousand only) within one month and in default of such payment, the appellant shall undergo imprisonment for two months.

With this modification of the order of the High Court as regards sentence, the appeal is disposed of.

Sd/-

.....J.
[P. VENKATARAMA REDDI]

Sd/-

New Delhi.....J.
March 11, 2005.[A.K. MATHUR]