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Crl.M.P.No.8747 of 2023
in Crl.A.No.673 of 2023

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M. NIRMAL KUMAR., J.

This petition has been filed to suspend the sentence imposed on the petitioners by the judgment dated 02.06.2023 passed in S.C.No.53 of 2018 dated 23.02.2023 on the file of the Sessions Judge/Special Court for Exclusive trial of cases registered under the Schedule Caste and Schedule Tribes (POA) Act, 1989, Villupuram and enlarge the petitioners on bail till pending disposal of the above Criminal Appeal.

2. The petitioners have been convicted by the Trial Court in S.C.No.53 of 2018 for the offences under Sections 294(b), 394 IPC and Sections 3(1)(r) & 3(1) (s) & 3(2)(va) of SC/ST (POA) Amendment Act and sentenced them as under:

Rank	Charges	Result	Punishment
A1	U/s.294(b) IPC	Proved	Convicted and sentenced to undergo S.I for 3 months.
	U/s.3(1)(r) of SC/ST (POA) Amendment Act	Proved	Convicted and sentenced to undergo S.I for each three months with fine of Rs.5,000/-, in default S.I., for 3 months.
	U/s.3(1) TNPPDL	Not proved	Acquitted u/s.235(1) of Cr.P.C.



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Rank	Charges	Result	Punishment
	Act		
A1	U/s.3(1) (s) of SC/ST (POA) Amendment Act	Proved	Convicted and sentenced to undergo S.I for each three months with fine of Rs.5,000/-, in default S.I., for 3 months.
	U/s.324 IPC & Section 3(2) (va) of SC/ST (POA) Amendment Act	Not Proved	Acquitted u/s.235(1) of Cr.P.C.
A2	U/s.324 IPC	Proved	Convicted and sentenced to undergo R.I for three years
	U/s.3(2) (va) of SC/ST (POA) Amendment Act	Proved	Convicted and sentenced to undergo R.I for three years. With fine of Rs.10,000/-, in default S.I., for six months
	U/s.3(1)(r) of SC/ST (POA) Amendment Act	Not proved	Acquitted u/s.235(1) of Cr.P.C.

Challenging the same, the petitioners have preferred an appeal before this Court and seeking suspension of sentence.

3. The case of the prosecution is that the petitioners had assaulted PW.1 and PW.2 using cricket stump and caused grievous injuries and it is admitted by PW.1 and PW.2. They had requested A1, A2 and others to join



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with them in the game of cricket for which they refused, abused them by calling their caste name and attacked them by using cricket stump.

4. The learned counsel for the petitioners submitted that PW.1 and PW.2 had admitted that a day earlier they joined the cricket game and played together. In such circumstances, they were not allowed to play the game not for the reason of caste, but for the reason PW.1 and PW.2 were in drunken state and they may spoil the game. It was PW.1 and PW.2 who are the aggressor, assaulted and disturbed the game in the melee and they fell down, due to which, PW.1 and PW.2 sustained injuries. Later projected it as, they were attacked using stumps by the petitioners. PW.12 causality doctor who examined PW.1 and PW.2 records smell of alcohol in the report. The petitioners and PW.1 & PW.2 are known to each other for quite some time and playing cricket together. Due to inebriated condition of PW.2, they were not permitted to play cricket. A false case foisted against A1 and A2, that since PW.1 belongs to schedule caste community, the petitioners used abusive words and attacked PW1 and PW.2. PW.1 states that at 8.30 p.m., both PW.1 and PW.2 had gone to the hospital, both got admitted at the same



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time. But the medical records proved that both of them came there with 3 hours difference. It is only a cricket game fight which is given criminal colour. The trial Court on considering the evidence and medical records convicted the petitioners and the maximum conviction is 3 years. Already, their sentence suspended.

5. The learned Additional Public Prosecutor has filed his counter.

The case of the prosecution is that on 14.04.2015, when the accused were playing cricket in Manickam Gounders Vacant land and the witnesses PW.1 & PW.2 asked them to include in the game. At about 6.30 p.m., on seeing Kavirajan accused have said “ஏன்டா பறதேவிடியா பையா நான் விளையாட்டுக்கு சேர்க்கமாட்டேன் என்று சொல்கிறேனே இங்கு ஏன் நிற்கிறாய்” A1 took an pen knife and assaulted in his left leg knees and caused simple injuries to him. A2 assaulted witness Paramesh with cricket bat in the left side of the head and caused simple injuries to him. A2 with cricket stump said “ பறதேவிடியா பசங்களா எங்களிடம் வைத்துக் கொண்டால் உங்களை கொலை செய்து விடுவோம்”. Hence the complaint.



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5.1 It is submitted that based on the above complaint, a case was registered in Kandamangalam Police Station, Villupuram in Crime No.94 of 2015, for the offence under Sections 294(b), 324, 506(ii) IPC r/w 3(1)(r), 3(2)(va) SC/ST Act, 1989 on 14.04.2015 at about 21.30 hours, against the accused by Tr.Harikrishnan, the then Inspector of Police, Kandamangalam Police Station and submitted before the then Deputy Superintendent of Police, Villupuram Sub Division and he taken up the case for investigation.

5.2.It is submitted that the trial Court framed charges against the accused. During trial, the prosecution has examined 16 witnesses and marked 17 Exhibits and one Material Object was marked. On defence side, no witness, no exhibit, no material object were marked.

PW.1	Tr.Kavirajan/defacto complainant	Deposed the incident happened to him and his friends and lodged a complaint before the respondent police [Ex.P1]
PW.2	Tr.Paramesh/victim	Corroborated the evidence of PW.1
PW.3	Tr.Vignesh/victim	Corroborated the evidence of PW.1
PW.4	Tr.Suman/victim	Corroborated the evidence of PW.1



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PW.5	Tr.Suriya	Corroborated the evidence of PW.1
PW.6	Tr.Sugumar/ Observation Mahazar	Deposed that he attested in the observation mahazar
PW.7	Tr.Thirumalai/ Observation Mahazar	Deposed that he attested in the observation mahazar
PW.8	Tr.Seenuvasan, Tahsildar, Villupuram	Deposed that he issued Community Certificate of accused [Ex.P.5 and witness Kavirajan [Ex.P.4]
PW.9	Tr.Methew Francis/ Tahsildar	Deposed that he issued Community Certificate witness Paramesh [Ex.P.6]
PW.10	Tr.Pandiyan/ confession witness	Deposed that he attested in the confession statement of accused
PW.11	Tr.Karnesh/ witness	Deposed that he attested in the confession statement of accused
PW.12	Dr.Ganesh	Deposed that he treated the witness and issued a A.R to victim Paramesh [Ex.P16]
PW.13	Tr.Harikrishnan/ Inspector of Police	Deposed that he received the complaint and registered a case in Cr.No.94 of 2015 [Ex.P.9]
PW.14	Tr.S.Seetharaman/ Deputy Superintendent of Police	Deposed that after registering the case, as per the proceedings of the Superintendent of Police [Ex.P.10] he took up the case for further investigation. He went to the scene of occurrence and drew rough sketch and prepared observation mahazar [Ex.P11 & Ex.P12] in the present of witness. Thereafter, he prepared a special report and sent to the



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		concerned Court. He seized the unnumbered motor vehicle under the cover of seizure mahazar in the presence of witnesses [Ex.P14] and sent the property to the concerned court through form-95 [Ex.P15]
PW.15	Tr.J.Sankar/ Deputy Superintendent of Police	Deposed that he took up the case for further investigation and examined the witnesses and recorded their statements and complete the investigation and filed a charge sheet before the competent Court in accordance with law
PW.16	Dr.Dinesh Krishna	Deposed that he treated the witness and issued a A.R. To victim Kavirajan [Ex.P17]

6. The learned counsel for the 2nd respondent produced typed set of papers annexing the wound certificate of PW.1 & PW.2 and the evidence of PW.1 to PW.4 who are the injured and eye witnesses present in the scene of occurrence. The finding of the lower Court is not proper, the complaint is that PW.1 & PW.2 were proceeding to the liquor shop, at that time saw petitioners playing cricket and requested to join them in the game. But the lower Court given a finding as though petitioners were in a inebriated condition. PW.1 and PW.2 requested the petitioners to join them in the game, but they were abused using the caste name and they assaulted using



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cricket stump which is recorded in the Accident Register, as well in the wound certificate. Despite PW.1 and PW.2 sustained grievous injury, the opinion recorded as simple in nature. Further submitted that PW.3 and PW.4 are the eye witnesses, their evidence corroborated to each other. The trial Court had though convicted, has given lessor sentence, which is not proper. Further under Section 3(1)(r), the trial Court sentenced the petitioner for three months period, which is not proper, when the minimum sentence is 6 months. Further submitted that the petitioners have not given proper address and their availability. They would not be available for the appeal.

7. Considering the submissions and perusal of records produced, it is a fight with regard to play of cricket game at that time exchange of heated words and scuffle. It is seen on an earlier occasion PW.1 and PW.2 joined the petitioners and played cricket. The petitioner's contention is that PW.1 and PW.2 were in inebriated condition and for that reason they objected and not permitted them to play cricket game. Further in this case the medical records confirms that the petitioners were smelling alcohol. The trial Court already suspended the sentence.



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8. In view of the above, this Court is inclined to suspend the sentence imposed on the petitioners. Accordingly, the relief of suspension of sentence and bail is granted on the following conditions till the disposal of the above Criminal appeal:

(a) The petitioners are ordered to be enlarged on bail, on condition that they shall execute a separate 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 Sessions Judge/Special Court for Exclusive trial of cases registered under the Schedule Caste and Schedule Tribes (POA) Act, 1989, Villupuram.

(b) The petitioners/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioners shall appear before the Trial Court once in three months at 10.30 a.m. on the first working day of the month, until the disposal of the appeal and if he is not able to appear



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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.

9. Accordingly, this Criminal Miscellaneous Petition is ordered.

25.03.2024

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