

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.6995 of 2020

in Crl.R.C.No.1000 of 2020

Subash Chanra Bose

... Petitioner

Vs.

State rep.by its

.... Respondent

The Inspector of Police,
Perugavazhanthan Police Station,
Thiruvarur District.
(Crime No.41 of 2018).

PRAYER: Criminal Miscellaneous Petition filed under Section 397(1) and 439 of the Code of Criminal Procedure, to suspend the sentence imposed on the petitioner, the judgment of conviction passed by the Hon'ble Principal District and Sessions Judge, Thiruvarur in C.A.No.4 of 2020 dated 28.09.2020 that the Criminal Appeal is partly allowed the sentence and conviction imposed by the learned Chief Judicial Magistrate, Thiruvarur in S.C.No.9 of 2019 by the judgment dated 19.12.2019 thereby convicting the appellant under Section 325 of Indian Penal Code had been modified and the appellant is convicted for the offence punishable under Section 324 of Indian Penal Code and sentenced to undergo 6 months rigorous imprisonment and to pay a fine amount of Rs.500/-, failing which, to undergo one month simple imprisonment and the fine amount if any paid by the appellant shall be adjusted and the conviction and sentence passed by the Chief Judicial Magistrate, Thiruvarur in S.C.No.9 of 2019 with regard to offence under Sections 294(b) and 506(ii) of Indian Penal Code is set aside and the appellant is acquitted from the said charges. The period of detention already undergone by the appellant during the entire period in this case, is hereby set off and the trial Court is directed to secure the appellant to undergo the remaining period of imprisonment if any and enlarge the petitioner on bail.

For Petitioner : Mr.Swamisubramanian

For Respondent : Mr.C.Raghavan
Government Advocate [Crl. Side]

ORDER

The petitioner / accused was convicted in S.C.No.9 of 2019 by the learned Chief Judicial Magistrate, Thiruvarur, for the offence

under Sections 294(b), 506(ii), 325 and 307 IPC. The trial Court, by a judgment dated 19.12.2019 had found the petitioner is guilty and convicted him for offence under Sections 294(b) and 506(ii) IPC and acquitted the petitioner for the offence under Section 307 IPC. The petitioner was sentenced to undergo 4 years Rigorous Imprisonment for offence under Section 325 IPC and to pay a fine of Rs.500/-, in default, to undergo Simple Imprisonment for three months and for offence under Section 294(b) IPC, imposed to pay a fine of Rs.500/-, in default, to undergo Simple Imprisonment for one week and for offence under Section 506(ii) IPC, was sentenced to undergo 4 years Rigorous Imprisonment and sentenced to run concurrently.

2. Aggrieved over the above conviction and sentence, the petitioner had preferred an appeal before the learned Principal and Sessions Judge, Thiruvavur in C.A.No.4 of 2020. The Principal and Sessions Judge, Thiruvavur by judgment dated 28.09.2020 had partly allowed the appeal by modifying the conviction of offence under Section 325 to 324 IPC and sentenced to undergo 6 years Rigorous Imprisonment and to pay a fine of Rs.500/-, as regards for offence under Sections 294(b) and 506 (ii) IPC, the petitioner was acquitted from the charges. Challenging the same, the petitioner had filed the present revision.

3. The gist of the case is that on 07.04.2018 at about 7.30 p.m., while P.W.1 - Boobesh and P.W.2 - Thamaraiselvan, were returned from the TASMACH shop at Palaiyur, the petitioner herein came there and scolded them with filthy language. When the same was questioned by P.W.1 - Boobesh, the petitioner took a blow from his hip and assaulted him at right, left and back shoulders, left cheek, left side rib, lateral spine, with an intention to murder him. P.W.2 had intercepted and saved P.W.1. Thereafter, injured had been taken to the Government Hospital, Mannargudi, and later to Meenakshi Mission Hospital, Thanjavur for treatment. From the hospital, information was sent to the Police, who had come there and registered an F.I.R. The Investigation Officer visited the scene of occurrence, prepared Observation Mazahar, Rough Sketch and enquired the witnesses, who were present in the scene of occurrence. After collecting the documents from the Doctors, the charge sheet came to be filed against the petitioner. The petitioner was convicted by the trial Court and later his conviction was modified by the Lower Appellate Court as stated above.

4. The contention of the learned counsel for the petitioner is that P.W.1 in his evidence has stated that he was assaulted by the petitioner on his left and right cheek, shoulder. Thereafter, P.W.1 was examined by the Doctor - P.W.10 at Mannargudi Government Hospital and Ex.P.6 Accident Register was recorded. Thereafter, the petitioner had got admitted in the Meenakshi Mission Hospital, Thanjavur, where P.W.11 - Doctor examined and five injuries were noted in Ex.P.7, Wound certificate, and the same was recorded in Ex.P.8, Accident Register. Further P.W.1, admitted that he had lodged the complaint to a male Police Inspector and complaint was marked as Ex.P.1. However, it is seen from records that a female Inspector Supriya had received the complaint. Further, the evidence

of P.W.1 and P.W.2 are contra to each other. The evidence of P.W.3, P.W.4 and P.W.8 are in the nature of hearsay. P.W.5 and P.W.6 are the confession witnesses and recovery witnesses and they have not supported the case of the prosecution. P.W.6, is the independent eye-witness, P.W.7, is the observation mazahar witness, and they turned hostile. There have been contradiction in the evidence of P.W.10 - the Doctor who treated the petitioner in Mannargudi Government Hospital and P.W.11, the Doctor who treated the petitioner in Meenakshi Mission Hospital, Thanjavur. P.W.13 - is the Investigating Officer, who seized the material object Aruval and sent the same to Chemical Examination.

5. It is the further submission of the learned counsel for the petitioner that the fact of the case is P.W.1 and P.W.2 while returning back from TASMACH shop, fell down from the two wheeler and sustained injuries. The trial Court had not considered the above evidence in right perspective as well as the Lower Appellate Court. The Lower Appellate Court though acquitted the petitioner for offence under Sections 294(b) and 506(ii) IPC, had altered the conviction for offence under Section 325 to 324 IPC. It is further stated that the petitioner ought to have been acquitted from all the offences, since the evidence of P.W.1 is doubtful and contradictory to P.W.2 and medical evidence of P.W.10 and P.W.11 are contrary to the evidence of P.W.1.

6. Learned Government Advocate submitted that the petitioner had assaulted P.W.1 with aruval, due to which, P.W.1 sustained injuries on his shoulder, neck, in back and other places. P.W.1 immediately gone to the Government Hospital, Mannargudi and P.W.10 - Doctor examined him. Thereafter, for better treatment he had gone to Meenakshi Mission Hospital, Thanjavur and P.W.11 - Doctor, had examined him. From the Hospital, information was sent to the Police and they conducted the investigation. P.W.13, Investigating Officer, who had visited the scene of occurrence, prepared observation mazahar and recorded the statement of witnesses. After collecting documents from the Doctors, charge sheet was filed before the trial Court. Though the trial Court, convicted the petitioner for the offence under Sections 294(b), 506(ii), 325 IPC, the Lower Appellate Court set aside the offence under Sections 294(b) and 506(ii), and modified the offence under Section 325 IPC to Section 324 IPC and sentenced to undergo 6 years Rigorous Imprisonment and to pay a fine of Rs.500/-, failing which, to undergo one month simple imprisonment. Hence, he opposed this petition.

7. Considering the rival submissions and perusal of the materials, it is seen that P.W.1 is the injured witness. Admittedly, while P.W.1 and P.W.2 returning from the TASMACH shop, a quarrel arose between the petitioner and P.W.1 and at that time, the petitioner assaulted the P.W.1. Immediately, P.W.1 was taken to Mannargudi Government Hospital. P.W.10, Causality Medical Doctor, examined him and thereafter, he gone to the Meenakshi Mission Hospital, Thanjavur, wherein P.W.11, Doctor, examined him. There is a contradiction in the observation of P.W.10 and P.W.11. Further the evidence of P.W.2, who was present along with P.W.1 and P.W.6, who

is the eye-witness, are contradictory to each other. The Lower Appellate Court convicted the petitioner based on the evidence of the witness, acquitting him for the offence under Section 294(b) and 506(ii) IPC and modified the conviction to Section 325 IPC to 324 IPC. This Court, finds that the evidence of the witness P.W.1 is doubtful and hence, the conviction cannot be made solely based on the evidence of P.W.1.

8. Considering the facts and circumstances of the case and in view of the fact that there are several infirmities in the prosecution case and there are arguable points involved in the revision, as contended by learned counsel for the petitioner and further, the revision is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

9. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail in the event of his arrest on condition that the petitioner 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 Judicial Magistrate No.II, Mannargudi, within a period of 15 days from the date of receipt of a copy of this order and on further condition that the petitioner shall appear before the said Court on the first working day for a period of three months at 10.30 a.m. till the disposal of the revision.

-sd/-

01/12/2020

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE PRINCIPAL DISTRICT AND SESSIONS JUDGE,
THIRUVARUR.

2 THE JUDICIAL MAGISTRATE NO.II,
MANNARGUDI.

3 THE CHIEF JUDICIAL MAGISTRATE
THIRUVARUR.

4 THE INSPECTOR OF POLICE,
PERUGAVAHANTHAN POLICE STATION,
THIRUVARUR DISTRICT.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

C.C. to M/S. SWAMISUBRAMANIAN Advocate on payment of necessary charges

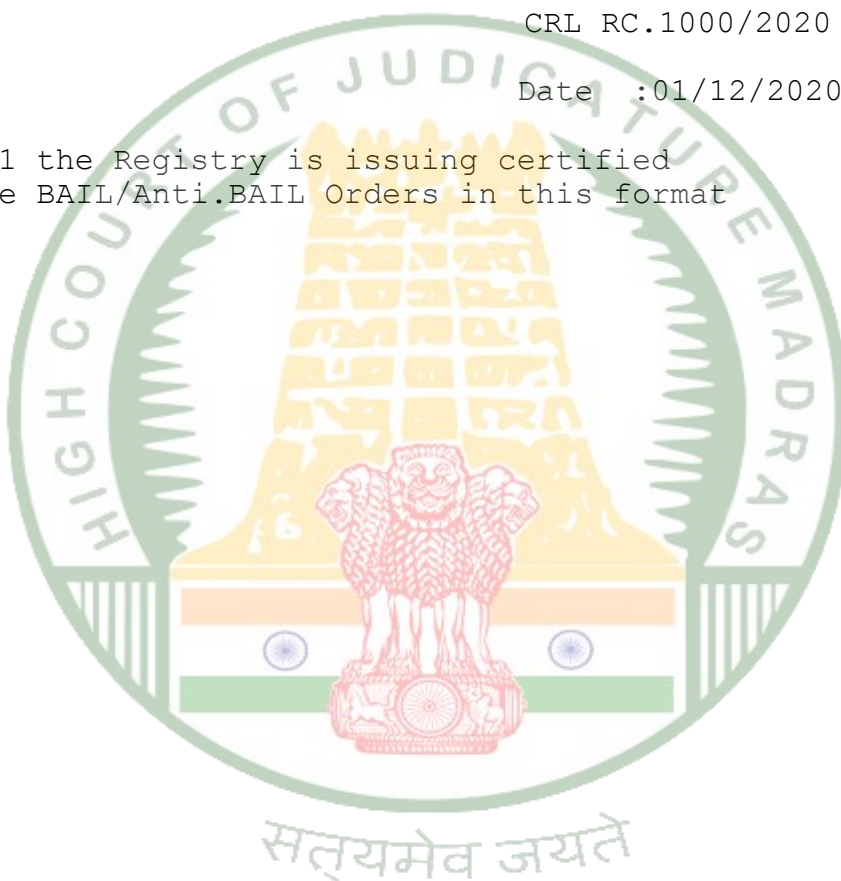
Order

in
CRL MP.6995/2020
in
CRL RC.1000/2020

Date :01/12/2020

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