

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.M.P.No.8832 of 2020
in C.A.No.540 of 2020

Loganathan

... Petitioner

Versus

State rep. by,
The Inspector of Police,
Nallur Police Station,
Vellangoundampatty Circle,
Namakkal District.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure, to suspend the sentence made in judgment dated 14.12.2020 in S.C.No.148 of 2018 passed by the learned Principal Sessions Judge, Namakkal and enlarge the petitioner on bail.

For Petitioner : Mr.S.N.Arunkumar

For Respondent : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in judgment, dated 14.12.2020, in S.C.No.148 of 2018 passed by the learned Principal Sessions Judge (FAC), Namakkal.

2.The gist of the case is that on 05.05.2016 at about 18.50 hours, a Public Transport Bus belonging to the Tamil Nadu State Transport Corporation was driven by PW1 from Velur to Tiruchengode. When the bus was near PNT Mill at Goundipalayam village, the petitioner pelted a stone on the front windshield glass and thereby, the passenger route bus bearing registration number TN 30 N 0724 got damaged. The bus was immediately halted, PW1/Driver, PW2/Conductor and other passengers got down and chased the person, who was running towards western side. After 500 meters of choose, the petitioner was apprehended and the complaint [Ex.P1] was lodged to the PW9, the Sub Inspector of Police. PW9 on receipt of the same registered a case in Crime No.56 of 2016, for offence under Section 3(1) of the Tamil Nadu Public Property (Damage and Loss) Act, 1994, visited the scene of occurrence,

prepared Observation Mahazar [Ex.P3], Rough Sketch [Ex.P8] in presence of the PW5 and PW6, sent the vehicle to Motor Vehicle Inspector for inspection, received the inspection report [Ex.P5]. PW8 Assistant Engineer of the Tamil Nadu State Transport Corporation assessed the damage of the vehicle and issued the certificate [Ex.P6]. PW3, the Driver from the Tamil Nadu State Transport Corporation, was on medical leave on the date of occurrence, passed by the way and seen the damaged bus and he was informed that the petitioner damaged the wind screen of the bus. PW4, who is working in Civil Ration Shop, travelled in the damaged bus, saw the person pelting a stone against the wind screen and caused damage. PW1 caught the petitioner. PW9 on completion of investigation, filed the charge sheet before the Court below.

3. During trial, the prosecution examined 9 witnesses and marked 9 documents. On the side of the defence, no witness was examined and no document was marked. On conclusion of trial, the trial Court convicted the petitioner as stated above.

4. The learned counsel for the petitioner submitted that the occurrence took place at night hours in highway at about 06.50 p.m., to 07.00 p.m., which is admitted by PW1 to PW4 and PW9/Investigating Officer. None of the witnesses present in the scene of occurrence stated about the availability of light and in aid of the light, they identified the petitioner. He further submitted that in this case, no identification parade held. All the witnesses admitted that the petitioner is a total stranger and they have not seen him before occurrence. PW5 and PW6, the witnesses for Observation Mahazar [Ex.P3] and Rough Sketch [Ex.P8] admitted there is no mention of presence of light in the scene of occurrence. Thus, the availability of light is not proved. In view of the same, the identify of the petitioner being the person, who caused damage to the wind screen is not conclusively proved. In this case, the stone by which the damaged was caused was not recovered and no materials object marked. Not only the stone, even the broken glass pieces or any photograph to show that the breakage of screen is produced. The damage of wind screen could have been caused for various reasons, even a small crack might develop into a breakage. The petitioner, who was in drunken state in the scene of occurrence on that day was picked up and made a scape goat. The evidence of PW3 and PW4 are highly artificial. PW3 gave an explanation that since it is a month of May, there was availability of natural light, which is totally false. PW4 stated that it was PW1 and PW2 who identified the petitioner as the person, who caused damage to the wind screen.

5. The learned counsel for the petitioner further submitted that there are contradiction in the evidence of PW5 and PW6. PW5 stated that the Observation Mahazar [Ex.P3] was hand written by the Sub Inspector of Police/PW9. PW6 stated that the Observation Mahazar [Ex.P3] was typed in a laptop and print out was taken in place of occurrence and he signed. Both the witnesses admitted that they are residing near the Police Station. Ex.P5 is the Motor Vehicle Inspector Report and the Damage Report is Ex.P6.

PW8, the Assistant Engineer is from the Tamil Nadu State Transport Corporation and he has not given how the value of damage was arrived at. Thus, the trial Court has failed to look into all these aspects and convicted the petitioner mechanically. Hence, he prayed for suspension of sentence till the disposal of the appeal.

6.The learned Additional Public Prosecutor appearing for the respondent Police submitted that PW1 is the Driver of the Public Transport Bus belonging to the Tamil Nadu State Transport Corporation bearing Registration Number TN 30 N 0724. On 05.05.2016, when PW1 was plying the bus between Velur to Tiruchengode, near PNT Mill, a unknown person pelted a stone on the wind screen and caused damage. Immediately, PW1 stopped the vehicle. PW1/driver and PW2/Conductor of the bus chased the person and caught him. PW1 lodged a complaint [Ex.P1] to the respondent Police on the same day. PW9, the Sub Inspector of Police reached the scene of occurrence, prepared Observation Mahazar [Ex.P3], Rough Sketch [Ex.P8], examined the witnesses present in the scene of occurrence. In this case, there are four eye witnesses viz., PW1 to PW4. PW5 and PW6 are the witnesses for Observation Mahazar [Ex.P3] and Rough Sketch [Ex.P8]. PW7 is the Motor Vehicle Inspector, who examined the vehicle and issued report/Ex.P7. PW8, the Assistant Engineer of the Tamil Nadu State Transport Corporation assessed the value of damage caused to vehicle and issued Ex.P6/Certificate. PW9 on completion of investigation filed charge sheet before the trial Court. On the evidence and materials let-in by the prosecution, the trial Court had rightly convicted the petitioner as stated above. The Additional Public Prosecutor fairly submitted that in this case, the stone which was pelted by the petitioner in causing damage to the vehicle was not seized and produced as material object and also pieces of broken glass.

7.On considering the rival submissions and on perusal of the materials, it is seen that the occurrence had taken place between Velur to Tiruchengode highway at about 07.00 p.m. PW1 to PW6 have not stated about the availability of light in the scene of occurrence. PW1 has not stated that how he saw and identified the petitioner. PW1 and PW2 stated that they chased a person for 500 meters and caught him. The prosecution has not taken any steps to confirm and prove that the petitioner has committed the offence. In this case, admittedly, the stone which caused the damage was not seized as well no broken glass pieces. The evidence of PW3 is highly doubtful. PW4 stated that it was PW1 and PW2 who identified the petitioner. PW8/Assistant Engineer of the Tamil Nadu State Transport Corporation is an independent witness. PW1, PW2 and PW3 and PW8 are employees under TNSTC. PW7, the Motor Vehicle Inspector would have been the right person to give valuation and the reason for damage of the wind screen. In this case, such evidence is lacking. In view of the above there are arguable points involved in the appeal. On considering the period of incarceration and the appeal 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.

8. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail 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 learned Principal Sessions Judge (FAC), Namakkal, 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 once in three months at 10.30 a.m., i.e., from January 2021 till the disposal of the appeal. The petition is ordered.

-sd/-
23/12/2020

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 SESSIONS JUDGE (FAC),
NAMAKKAL.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
NALLUR POLICE STATION,
VELLANGOUNDAMPATTY CIRCLE,
NAMAKKAL DISTRICT.

सत्यमेव जयते
WEB COPY

+1C.C. to M/S. S.N.ARUNKUMAR Advocate on payment of
necessary charges SR NO.8624

Order

in
CRL.MP.NO.8832/2020
in
CRL.A.NO.540/2020

Date :23/12/2020

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format

MK:31/12/2020



WEB COPY