

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.16440 of 2021

Vignesh

...

Petitioner

Vs

State Rep.by
Inspector of Police,
Samalpatti Police Station,
Krishnagiri District
(Crime No.104 of 2018)

...

Respondent

PRAYER: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure to set side the order passed by the Learned Principal District and Sessions Judge, (Vacation Sessions Judge), Krishnagiri, Krishnagiri District, in Crl.M.P.No.1324 of 2021 in Crl.A.No.3 of 2021 dated 09.08.2021.

For Petitioner

:

Mr.E.Kannadasan

For Respondent

:

Mr.A.Damodaran
Additional Public Prosecutor

ORDER

The petitioner has filed this petition seeking to set aside the order passed by the Principal District and Sessions Judge (Vacation Sessions Judge), Krishnagiri, dismissing the petition filed for suspension of sentence in Crl.M.P.No.1324 of 2021 in Crl.A.No.3 of 2021 dated 09.08.2021.

2.The facts of the case is that the defacto complainant/PW1 was attacked by the petitioner on 30.06.2018 at about 8.00 p.m. with hammer, caused injuries on her forehead and fingers and taken away 4 ½ sovereigns of Thaali chain and four lamps (Kuthuvilakku), thereafter, tied her hand and pushed her inside the house and locked the door. On hearing her alarm, the neighbors viz., PW2 to PW4 caught the petitioner when he attempted to flee away in his bike, fell down, sustained injuries and he was taken to the hospital. Thereafter, the defacto complainant lodged a complaint. On receipt of the same, the respondent police registered a case, visited the scene of occurrence, prepared rough sketch,

examined the witnesses, arrested the accused and after collecting the materials and documents, filed charge sheet before the Court.

3.The trial Court examined PW1 to PW11 and marked Exs.P1 to P14 and also produced MO1 to MO9. On conclusion of trial, the trial Court found the petitioner guilty and convicted him for the offence under Section 451 IPC and sentenced him to undergo two years rigorous imprisonment and to pay a fine of Rs.1,000/- and in default to pay the said fine amount to undergo three months simple imprisonment and also convicted for the offence under Section 394 IPC and sentenced him to undergo five years rigorous imprisonment and to pay a fine of Rs.5,000/- and in default to pay the said fine amount, he was sentenced to undergo six months simple imprisonment. Thereafter, he was committed to prison, against which, the petitioner had filed the appeal in CrI.A.No.3 of 2021 along with a petition for suspension of sentence in CrI.MP.No.52 of 2021. The lower Appellate Court, by order dated 20.05.2021, dismissed the same. Thereafter, the petitioner had approached this Court in CrI.O.P.No.11736 of 2021 and this Court, by order dated 26.07.2021,

directed the lower Appellate Court to consider the suspension of sentence petition afresh on merits and dispose of the same. Thereafter, the petitioner filed another suspension of sentence petition in CrI.MP.No.1324 of 2021 and the lower Appellate Court dismissed the same, against which, the present petition.

4.The contention of the learned counsel for the petitioner is that the petitioner is doing textile business at Thiruppathur. PW1's brother Mariappan, daughter Sathya married and settled in Thiruppathur, she used to visit the petitioner's shop regularly, purchased articles and owes some money to be paid. Further, the petitioner and the said Sathya became friendly, which was misunderstood by PW1, who informed the same to the husband of Sathya and there was some dispute. Thereafter, the said Sathya was staying with PW1 and failed to return the money. Hence, the petitioner had come there, sought return of money. At that time, there was a wordy quarrel, the petitioner's presence in the house was suspected, and the nearby residents of PWs 2 to 4 and others assaulted the petitioner badly. Thereafter, he was taken to the hospital for

treatment. This fact completely suppressed by the prosecution. The true facts suppressed to project the petitioner as an offender. The Trial Court failed to consider the same. He further submitted that all the witnesses viz., PW1 to PW4 are interested witnesses hailing from the same locality, and false case projected against the petitioner. PW1 in her evidence did not identify MO7 and MO8, the weapon used in the occurrence. There is a considerable amount of delay in lodging the complaint and no explanation given. Further, PW1 to PW4 state that the petitioner is known to them. Hence, the implication of the petitioner in the above case for other reason is apparent. The weapon seized in this case is not proved. Further, the articles MO1 to MO5 produced by PW1 herself. Thus, false implication of the petitioner is very much real. The trial Court failed to consider any of these aspects. Further, the trial Court on pre-conceived notion, convicted the accused, as could be seen from the judgment in paragraph – 11, evidence of PW11 one Veerappan extracted. This evidence pertains to one Veerappan, Doctor attached to Government Hospital, Krishnagiri. The said Dr.Veerappan is not a witness in this case and why his evidence extracted, no answer it proves

the fact that the trial Court had not appreciated the evidences in a proper perspective. He further submitted that the trial Court failed to draw adverse inference against prosecution for not investigating and producing any material with regard to the injuries sustained by the petitioner. The petitioner is running a textile shop. He has got no previous case against him and no reason been given why at all the petitioner has to indulge in such offence. The friendship of the petitioner with the said Sathya misconstrued and to keep petitioner away a false case has been fabricated.

5.He further submitted that during the investigation, the petitioner was a remand prisoner from 04.07.2018 to 23.08.2018. Further, after his conviction from 20.11.2020, he is in prison for nearly a year. The petitioner hails from a respectful family, got deep social roots. The petitioner shall not evade justice and shall abide by any condition. Hence, approached the bail application.

6.The learned Additional Public Prosecutor submits that in this case, PW1 to PW4 are the occurrence witnesses, who clearly spoken about the presence of the petitioner near the house of PW1. PW1 was attacked, her Thali chain of 4 ½ sovereign and four lamps were taken away from the petitioner's house, forcibly putting her under threat of life. Thereafter, on her raising alarm, PW2 to PW4 who are neighbours caught the petitioner. The petitioner attempted to flee at fell from his bike, sustained injury. Both petitioner and PW1 were taken to the hospital and given treatment. PW5 & 6 are the observation Mahazer witnesses, PW7 and 9 are the witnesses for the arrest, PW8 is the doctor, who treated PW1 given accident register and wound certificate. The injuries sustained by PW1 are confirmed. PW10 is the SI police who had registered the FIR and conducted initial investigation. PW11 is the investigating officer, who conducted the investigation and filed the charge sheet. The trial Court, on the evidence of witness and materials produced, had given a well reasoned judgment. If the petitioner's sentence is suspended, he would evade justice and the appeal proceedings would get stalled.

7.Considering the submissions and on perusal of the materials, it is seen that the petitioner is of young age, who is running a textile shop in Thiruppathur. The injuries sustained by the petitioner, though spoken to by PW1 to 4, the prosecution for the reason best known, not produced any materials in this regard. The trial Court giving a explanation that PW8 Doctor in his evidence states about the injuries sustained by the petitioner cannot be accepted. There is no contemplary materials produced. PW1 is the victim, whose statement highly contradictory. She had given improvised , her evidence cannot be completely relied upon in view of the contradictions. PWs2,3,4 though state to be present near scene of occurrence, give different version and their evidence are contradictory to each other. Further, the manner in which, the petitioner was apprehended and also the injuries sustained, there are major contradictions. PW 3 states that the brother of PW1 had come there and thereafter, lodged a complaint. For the reason best known, brother of PW1 not examined in this case. PWs2 & 4 state that the petitioner fell from the bike, PW3 states that the accused sustained injuries while attempting to run away. PW5 & 6 the witness of observation mahazer

except for identifying their signature, they have not stated anything more. PW 7 & 9 the witnesses for the arrest, there is no recovery thereof. PW8 doctor states about the injuries of PW1, which is simple in nature. The injuries does not confirm to the manner in which PW1 had given her version, which is highly dramatic. PW10 is the Sub Inspector of Police, who registered the case, PW11 is the investigating officer. Further, from the perusal of the trial Court judgment as pointed out by the counsel for the petitioner, paragraph 11, is completely out of context and no way connected to the above case. Further, in this case, the recovery highly doubtful. Inquiries does not confirm to the ocular evidence. Further, the petitioner got no bad antecedent, has got deep social roots, residing with his family, the petitioner already confined in prison for more than one year. The appeal filed is a statutory appeal and it might take some time to be taken for final hearing.

8. In view of the same, this Court is inclined to suspend the sentence grant bail to the petitioner. Accordingly, the criminal original petition is allowed.

9. In view of the same, the Substantive Sentence of Imprisonment imposed on the petitioner alone is suspended till the disposal of the appeal and the petitioner is ordered to be enlarged on bail, on condition that he 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 Principal District and Sessions Judge, Krishnagiri.

10. Further, the petitioner is directed to appear before the trial Court on the first working day of every English month at 10.30 a.m., until disposal of the criminal appeal.

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21.10.2021

Note: Issue order copy on 25.10.2021.

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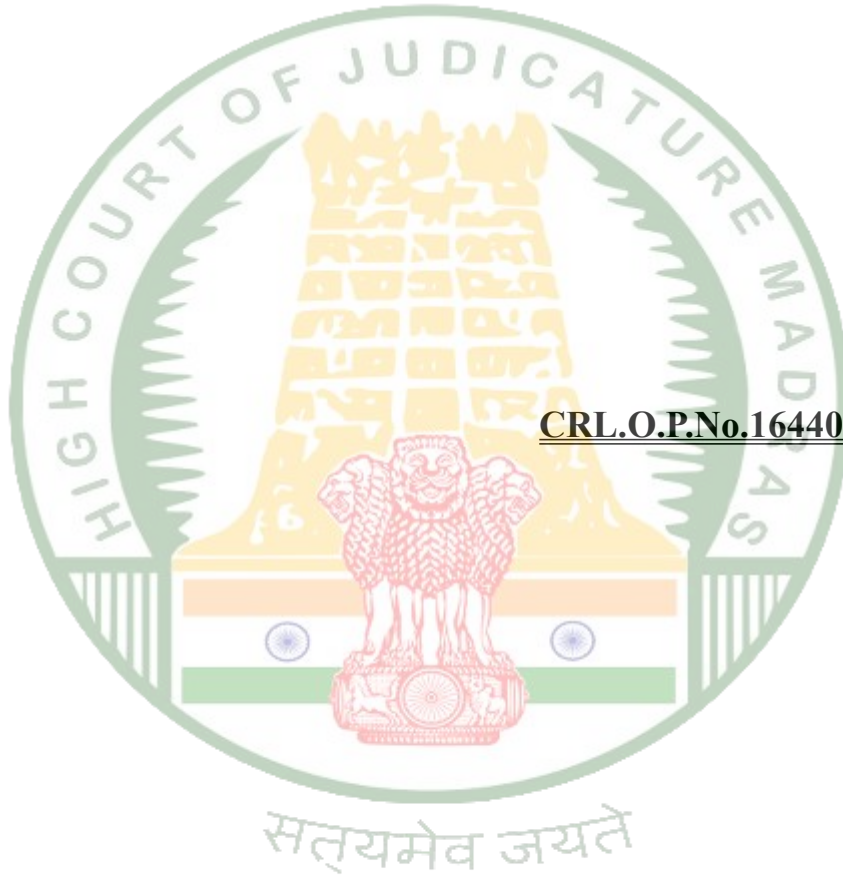
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M.NIRMAL KUMAR, J.

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