



CrI.M.P.No.4902 of 2023 in CrI.R.C.No.647 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

CrI.M.P.No.4902 of 2023 in
CrI.R.C.No.647 of 2023

A.Kanagaraj,
S/o.Angamuthu.

... Petitioner

Vs.

State by
The Inspector of Police,
Erumapatty Police Station.
(Crime No.148 of 2015).

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C., to suspend the execution of the Sentence passed in SC No.81 of 2018 dated 21.01.2021 by the learned Additional Assistant Sessions Judge, Namakkal which was confirmed against the petitioner in CrI.A.No.19 of 2021 dated 13.03.2023 by the learned Principal Sessions Judge, Namakkal and to enlarge the petitioner on bail.

For Petitioner : Mr.T.Dhasarathan
For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the execution of the Sentence passed in S.C.No.81 of 2018, dated 21.01.2021



by the learned Additional Assistant Sessions Judge, Namakkal which was confirmed against the petitioner in Crl.A.No.19 of 2021, dated 13.03.2023 by the learned Principal Sessions Judge, Namakkal and to enlarge the petitioner on bail.

2.The petitioner was convicted by the trial Court for offence under Section 324 IPC and sentenced to undergo three years imprisonment and for offence under Section 307 IPC, the petitioner convicted and sentenced to undergo seven years imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo Simple Imprisonment for six months. Challenging the conviction and sentence of the trial Court, the petitioner preferred an appeal before the lower appellate Court and the same was dismissed on 13.03.2023 confirming the judgment of the trial Court. Aggrieved over the same, the present Criminal Revision Case and the Suspension of Sentence.

3.The learned counsel for the petitioner submitted that the petitioner had disturbed matrimonial life and his wife is the defacto complainant/PW1 in this case. Due to difference of opinion, they got separated and they were



living separately. The petitioner went to call his wife back to matrimonial home, at that time, there was scuffle and she fell down. Due to which, the petitioner was forcibly assaulted by his father-in-law and sustained injury. Suppressing the same, a false case has been projected as though the petitioner entered the defacto complainant's house, took a crow bar available there and attacked PW1 indiscriminately on her head, shoulder and legs which caused fracture and he also attacked her father. The trial Court failed to consider that in this case, there is no evidence of X-ray or scan report to prove the fracture sustained by PW1. He further submitted that the Doctor who treated PW1 at Government Hospital, Salem not examined during trial. The Accident Register copy and the wound certificate issued by the Doctor, Government Hospital, Salem (Exs.P6 to P8) marked through PW9, Doctor attached to the Government Hospital, Namakkal who was the casualty Doctor initially treated. Hence, Exs.P6 to P9 are inadmissible. On the contrary, the trial Court as well as the lower appellate Court relied on these documents in convicting the petitioner under Section 307 IPC.



4.He further submitted that PW1, who is the defacto complainant estranged wife of the petitioner gave exaggerated version and she appeared for evidence through Webex software/virtual mode and shown the injuries sustained. At that time, the injuries are magnified and projected. The trial Court in its judgment records that since the injury was grievous for that reason PW1 could not attended the Court, is not proper. He further submitted that the recovery of crow bar is also very doubtful. When the case itself is that the crow bar is left in the scene of occurrence, the recovery of crow bar has been shown at the instance of the petitioner. In any event, the offence under Section 307 IPC is not made out. Hence, he prayed for Suspension of Sentence and bail.

5.The learned Additional Public Prosecutor appearing for the respondent Police submitted that the petitioner was convicted for offence under Sections 324 and 307 of IPC. On the information received from the hospital, the Investigating Officer had gone there, received the complaint from PW1, visited the scene of occurrence, examined the witnesses, collected the documents and filed the charge sheet. Before the trial Court,



PW1 to PW10 examined and Exs.P1 to P10 marked and MO1 marked. On the side of the defence, the accused examined two witnesses as DW1 & DW2. He further submitted that PW1 is the injured witness, who clearly stated about the injuries sustained by her using crow bar by the petitioner. Her father Vellasamy was also assaulted. Both PW1 and her father Vellasamy had gone to the Government Hospital, Namakkal where PW9 examined them, recorded the same in the Accident Register. Since the injuries was grievous, they were referred to the Government Hospital, Salem where they took treatment. PW1 took treatment as inpatient for nearly a month. The evidence of PW9 confirms the nature of the injury. PW2 is the mother of PW1, who was also present at the scene of occurrence, she corroborated the evidence of PW1 with regard to the assault and attack made by the petitioner. The other witnesses PW3 to PW5 who are from neighbourhood had not supported the case of prosecution. He fairly submitted that in this case, no X-ray or scan report produced by the prosecution. PW9 gave details about the fracture injuries sustained by PW1 and her father Vellasamy. Hence, opposed the suspension of sentence petition.



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6.Considering the submissions and on perusal of the materials, it is seen that PW1 and the petitioner are estranged husband and wife and they were living separately for quite sometime. PW1 gives an exaggerated version with regard to injuries sustained by her. She stated that she was hit with crow bar on the forehead, due to which she sustained blood injuries which was corroborated by PW2. But the ocular evidence and medical evidence are contradictory. Added to it, in this case, no X-ray or scan report produced to confirm the injuries sustained by PW1. No Doctor from the Government Hospital, Salem examined. In view of the same, this Court is of the view that the conviction of the petitioner to be relooked and reviewed.

7.Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the present Criminal Revision Case 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 trial Court.



8.Further, the petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m. until the disposal of the appeal and if he is not able to appear before the Trial Court on that day, he 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 his absence as directed by the Trial Court. Accordingly, this Miscellaneous Petition is ordered. Accordingly, this Miscellaneous Petition is ordered.

22.11.2023

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Note: Issue Order Copy on 23.11.2023.

To

- 1.The Additional Assistant Sessions Court,
Namakkal
- 2.The Principal Sessions Court,
Namakkal.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Inspector of Police,
Erumapatty Police Station.
- 5.The Public Prosecutor,



High Court, Madras.

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M. NIRMAL KUMAR., J.

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