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*Crl.M.P.No.16547 of 2023
in Crl.R.C.No.1736 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.11.2023

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.16547 of 2023
in
Crl.R.C.No.1736 of 2023

Dharmaraj

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Veerapandi Police Station,
Tiruppur District.
Crime No.408 of 2019

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence imposed against the petitioner passed in C.A.No.111 of 2022 dated 09.08.2023 by the learned Principal District and Sessions Judge at Tiruppur confirming the judgment passed by the learned Judicial Magistrate No.IV, Tiruppur in C.C.No.67 of 2020 dated 02.08.2022 and release the petitioner on bail pending disposal of the above revision petition.



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

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Judicial Magistrate No.IV, Tiruppur in C.C.No.67 of 2020 dated 02.08.2022 which was confirmed by the learned Principal District and Sessions Judge at Tiruppur in C.A.No.111 of 2022 dated 09.08.2023 and enlarge the petitioner on bail pending disposal of the above revision petition.

2.The petitioner along with his wife were tried by the Trial Court in C.C.No.67 of 2020. On conclusion of the trial, the Trial Court acquitted the petitioner and his wife for the offence under Section 294(b) IPC and as regards the petitioner, he was convicted for the offence under Section 325 IPC and sentenced to undergo one year simple imprisonment and to pay a fine of Rs.2,000/-, in default to undergo one month simple imprisonment.



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Aggrieved against the same, the petitioner preferred an appeal in C.A.No.111 of 2022. The learned Principal Sessions Judge, Tiruppur by judgment dated 09.08.2023 dismissed the appeal confirming the conviction and sentence imposed by the Trial Court. Against which, the present revision petition is filed.

3.The gist of the case is that on 08.12.2019 at about 5.00 p.m, the petitioner's wife Sadha Nandhini went to the house of P.W.1 and asked for Electricity Charges. When P.W.1 handed over Electricity charges for herself and one Eswaran, yet another resident, the petitioner's wife asked for additional Rs.20/- being net service charges. At that time, P.W.2/husband of P.W.1 objected to the same and questioned that six months prior when P.W.1 had the turn of making payment for Electricity, the net service charge of Rs.20/- was not demanded and now why the petitioner's wife is demanding and there was a wordy quarrel in this regard. At that time, the petitioner is said to have rushed out from his house questioning P.W.1 and P.W.2, abused them and the petitioner is said to have hit P.W.2 on his nose and caused grievous injury.



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4.Before the Trial Court, on the side of the prosecution P.W.1 to P.W.7 were examined and Ex.P1 to Ex.P8 marked. On the side of the petitioner/accused, no witness examined and no documents marked. On conclusion of the trial, the Trial Court convicted the petitioner as stated above.

5.The contention of the learned counsel for the petitioner is that originally charge sheet was filed against the petitioner and his wife for the offence under Sections 294(b) and 323 IPC, thereafter on conclusion of the trial, the Trial Court found the petitioner guilty and convicted him under Section 325 IPC without any further material. He would submit that the evidence of P.W.1, P.W.2 and P.W.5 are contradictory to each other. There was a wordy quarrel and scuffle among the residents in a compound which has been blown out of proportion and projected as though the petitioner had hit P.W.2. P.W.6/Doctor who treated P.W.2 issued Ex.P3 and given his opinion that the injury on the neck is simple in nature. He further submit that as regards the injury sustained in the nose, though it is recorded that



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E.N.T. Surgeon had examined P.W.2 and that injury is grievous in nature, neither E.N.T. Specialist examined nor any X-ray in that regard was produced in this case. He would submit that the Trial Court finding that there is no use of abusive words had acquitted both the petitioner and his wife for the offence under Section 294(b) IPC but on the contrary, on the same set of evidence had convicted the petitioner as stated above. These factors have not been considered both by the Trial Court as well as by the Lower Appellate Court. Hence, he prayed for grant of suspension of sentence.

6.The learned Additional Public Prosecutor submits that in this case totally there are seven witnesses. P.W.1 and P.W.2 are the wife and husband and they are neighbours to the petitioner. P.W.5 is the another witness who was projected as eye witness. P.W.3 and P.W.4 are the witnesses for observation mahazar/Ex.P7 and rough sketch/Ex.P6. P.W.6 is the Doctor who is said to have treated P.W.2 and issued Ex.P3. P.W.7 is the Investigating Officer. He would submit that there was a wordy quarrel between the petitioner's wife and P.W.1 with regard to demand made by the



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petitioner's wife to pay additional Rs.20/- towards net service charges in making payment of Electricity charges, for which, the petitioner abused P.W.1 and her husband/P.W.2 in a filthy language and hit P.W.2 and caused grievous injury on his neck and nose. The Trial Court considering the injury sustained by P.W.2 convicted the petitioner and the same was rightly confirmed by the Lower Appellate Court. Hence, he prayed for dismissal of this petition.

7.Considering the submissions made and on perusal of the materials, this Court find force and reason in the petitioner's submission that in this case convicting the petitioner under Section 325 IPC is without any further material which needs re-consideration. Further, the dispute is among the residents in a compound and that too, for payment of net service charges in making electricity payment. In view of the same, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the revision petition.

8.Accordingly, the Substantive Sentence of Imprisonment imposed on



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the petitioner is suspended till the disposal of the revision petition and the petitioner is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.5,000/- (Rupees Five Thousand only) with two sureties each for a like sum to the satisfaction of the Judicial Magistrate No.IV, Tiruppur.

9.Further, the petitioner shall appear before the Trial Court once in three months at 10.30 a.m. until the disposal of the revision petition 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.

10.Accordingly, this Miscellaneous Petition is ordered.

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M. NIRMAL KUMAR, J.

cse

To

- 1.The Inspector of Police,
Veerapandi Police Station,
Tiruppur District.
- 2.The Principal District and Sessions Judge,
Tiruppur.
- 3.The Judicial Magistrate No.IV,
Tiruppur.
- 4.The Public Prosecutor,
High Court, Madras.

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