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*Crl.M.P.No.16859 of 2023
in Crl.R.C.No.1776 of 2023*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.10.2023

CORAM:

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

Crl.M.P.No.16859 of 2023
in
Crl.R.C.No.1776 of 2023

Vellaisamy

... Petitioner

Vs.

State by Inspector of Police,
J-3, Guindy Traffic Investigation Wing, Guindy,
Chennai – 600 090

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 397(1) of Cr.P.C to suspend the sentence of 6 months Simple Imprisonment imposed on the Petitioner for the offence under Sections 279, 338 and 304(A) I.P.C. In C.A.No.115 of 2022 on the file of XIX Additional Sessions Court, Chennai confirming the conviction and sentence imposed in C.C.No.1355/2015 by the IV Metropolitan Magistrate, Saidapet, Chennai and enlarge the petitioner on bail.

For Petitioner : Mr.K.Subburam

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned IV Metropolitan Magistrate, Saidapet, Chennai in C.C.No.1355/2015 and enlarge the petitioner on bail, pending disposal of the above revision case.

2. The petitioner who is the driver of the Tamil Nadu State Transport Corporation convicted by the trial court by judgment dated 11.05.2022 and sentenced to undergo one month simple imprisonment and to pay fine of Rs.1,000/-, in default, to undergo one week simple imprisonment, for the offence under section 279 IPC and sentenced to undergo one month simple imprisonment and to pay fine of Rs.1,000/-, in default, to undergo one week simple imprisonment for the offence under section 338 IPC and sentenced to undergo six months simple imprisonment and to pay fine of Rs.8,000/-, in default, to undergo one month simple imprisonment for the offence under section 304(A) IPC. Against the conviction, the petitioner preferred



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C.A.No.115 of 2022, before the learned XIX Additional Sessions Court, Chennai. By judgment dated 11.07.2023, learned XIX Additional Sessions Court, Chennai dismissed the appeal confirming the conviction and sentence of the trial court, against which the present revision.

3. The contention of the petitioner is that the petitioner is a State Transport Corporation Driver who was driving the Government bus bearing No.TN01-N-8985 and was allotted to route No.570S. While the bus was proceeding towards Guindy, opposite to Kasi Theatre, a bike driven by one Balakrishnan had come in a rash and negligent manner and caused an accident. To avoid the same and to save the said Balakrishnan, the petitioner applied sudden brake, turned the vehicle to the left. In the meanwhile, PW3 who was standing on the road, got injured and thereafter, on the complaint of the PW4, the respondent police had registered a case. PW3 in her evidence admits that she was standing away from the platform, in the road and thereby, she had contributed for the injuries sustained by her. PW4 gives an exaggerated version as though bus had overshot the signal and caused the accident. In this case, none of the traffic constable present near



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the signal point was examined to prove that the bus had overshoot the signal and it was for the driver's rashness and negligence in driving that the accident took place. The Motor Vehicle Inspector report would only confirm that the bike had passed the bus on the wrong side i.e., on the left side, due to which, it came into contact with the bus and lost balance and fell under the tyre of the bus. Further the scene of occurrence is near the bus stop and the bus was about to stop there. In such case, there is no question of rash and negligent driving. The doctor/PW10 who declared the death of Balakrishnan, the doctor/PW2 who conducted post-mortem and the doctor/PW9 who treated PW3 were examined and the other witnesses are formal in nature. PW4 complainant admits that it is the Inspector of Police who had written the complaint and hence, the foundation of the case becomes doubtful, which fact the trial court as well as the lower appellate court had failed to consider. Hence, he sought for suspension of sentence.

4. The Additional Public Prosecutor strongly opposed the petition by stating that in this case, PW3 is an injured eye-witness who clearly stated about the accident and the manner in which the petitioner had driven the bus



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and dashed against the bike driven by the deceased BalaKrishnan and also ran over him and hit the petitioner. PW3 witness had sustained injuries on her left leg, right leg, hip and chin. She was immediately rushed to the ESI hospital, K.K.Nagar and thereafter, for further treatment to Rajiv Gandhi Government Hospital where she was treated as in-patient. PW4 is another eye-witness, the manager of Poorvika Mobiles who was present in the scene of occurrence, had given a complaint to the investigating officer. He had narrated the sequence of accident. In this case, totally 11 witnesses have been examined. PW1 and PW5 are the Motor Vehicle Inspectors who had examined the bus as well as the motor bike and given their reports. PW6 and PW7 are the witnesses to observation mahazar and Rough Sketch. PW10 is the doctor who declared the death of Balakrishnan and PW2 is the doctor who conducted post-mortem on him. PW9 is the doctor who treated PW3, the injured eye-witness. PW11, the Investigating Officer had examined all the witnesses, collected the documents and filed final report before the trial court. The trial court on the evidence and materials produced had rightly convicted the petitioner. The lower appellate court had dismissed the appeal confirming the conviction by the trial court and hence,



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prayed for dismissal of this petition.

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5. Considering the submissions made on either side and perusing the materials available on record, it is seen that the bike driven by the deceased Balakrishnan had come on the wrong side of the bus and the accident had taken place near the bus stop. The evidence of PW3 shows that she was waiting for the bus, but she was standing on the road and not on the platform. The evidence of PW4 is that the bus had overshot the signal. In this case, no traffic constable examined to prove that the bus had overshot the signal and the bus was driven in the rash and negligent manner and thereby, caused the accident. The Motor Vehicle Inspectors report confirm that the damage to the bus has been on the left side which fact not considered by both the courts below.

6. In view of the same, this court finds that there are arguable point. Accordingly, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the revision case.

7. Accordingly, the Substantive Sentence of Imprisonment imposed



*Crl.M.P.No.16859 of 2023
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on the petitioner is suspended till the disposal of the 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 IV Metropolitan Magistrate, Saidapet.

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 revision case 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.

9. Accordingly, this Miscellaneous Petition is ordered.

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WEB COPY



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To

- 1.The Inspector of Police,
J-3, Guindy Traffic Investigation Wing, Guindy,
Chennai – 600 090
- 2.The IV Metropolitan Magistrate, Saidapet, Chennai
- 3.The XIX Additional Sessions Court, Chennai
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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