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*Crl.M.P.Nos.16545 & 16546 of 2023
in Crl.RC.No.1735 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM:

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

Crl.M.P.Nos.16545 & 16546 of 2023
in
Crl.RC.No.1735 of 2023

Sundaramurthy

... Petitioner

Vs.

The State rep. by
Inspector of Police,
Kandhikuppam Police Station,
Krishnagiri District.
[Crime No.113/2016]

... Respondent

COMMON PRAYER: Criminal Miscellaneous Petition has been filed under Section 397(1) r/w. 401 and 482 of Cr.P.C to suspend the sentence passed by the learned Principal Sessions Judge, Krishnagiri, Krishnagiri District in Crl.A.No.19 of 2020 dated 02.08.2023 and confirming the judgment and sentence passed by the learned Chief Judicial Magistrate, Krishnagiri, Krishnagiri District in C.C.No.340 of 2019 dated 10.01.2020 and enlarge the petitioner on bail pending disposal of the above revision and to exempt the petitioner from his surrender.



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For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

COMMON ORDER

These Criminal Miscellaneous Petitions have been filed by the petitioner/accused, seeking to suspend the sentence of imprisonment imposed on the petitioner in Crl.A.No.19 of 2020 by judgment dated 02.08.2023 passed by the learned Principal Sessions Judge, Krishnagiri, Krishnagiri District confirming the judgment and sentence passed by the learned Chief Judicial Magistrate, Krishnagiri, Krishnagiri District in C.C.No.340 of 2019 dated 10.01.2020, till disposal of the main revision and enlarge the petitioner on bail and to exempt the petitioner from surrendering before the trial court pending disposal of the above revision.

2.The petitioner/accused in C.C.No.340 of 2019 was convicted by the Trial Court for the offence under Sections 279 and 304(A) of IPC and sentenced him to two years rigorous imprisonment and to pay a fine of



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Rs.10,000/-. Aggrieved against the same, the petitioner preferred an appeal in Crl.A.No.19 of 2020 and the learned Principal Sessions Judge, Krishnagiri District by judgment dated 02.08.2023 dismissed the appeal by confirming the conviction and sentence imposed on the petitioner. Against which, the present revision has been filed.

3.The contention of the learned counsel for the petitioner is that before the Trial Court ten witnesses were examined, of which P.W.1 to P.W.3 were projected as eye witnesses, but they are none other than son, daughter and cousin of the deceased. He would submit that though accident is said to have taken place in a public road in the middle of the day, no public witness was examined in this case. Further, the other two witnesses, namely, P.W.4 and P.W.5 are only hearsay witnesses who had come to the scene of occurrence later. Thus the identity of the petitioner being the driver of the vehicle had not been proved in this case. He further submit that in this case P.W.10/Investigating Officer marked the Postmortem report and the Motor Vehicle Inspector report, namely, Ex.P8 and Ex.P9 which is not admissible in evidence. Hence, the conviction and sentence imposed on



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the petitioner by the Trial Court which was confirmed by the Lower Appellate Court is not proper. Hence, he prayed for suspension of sentence.

4.Learned Additional Public Prosecutor submits that P.W.1 who is the son of the deceased is the complainant. On receipt of the complaint, P.W.9 who registered the FIR informed to P.W.10/Investigating Officer, who visited the scene of occurrence, prepared observation mahazar and rough sketch in the presences of P.W.6 and P.W.7. Thereafter, P.W.10 recorded the statement of witnesses, conducted inquest, sent the body for Postmortem, collected documents and reports and filed a final report in this case. He would submit that P.W.1 to P.W.3 have clearly state about the accident and the petitioner had driven the bus in a rash and negligent manner. He further submits that both the Courts below having satisfied with the evidence and materials produced had rightly convicted the petitioner.. Hence, he prayed for dismissal of the petitions.

5.Considering the submissions and on perusal of the materials, it is seen that in this case P.W.1 to P.W.3 were projected as eye witnesses but



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there are contradictions in their evidence. P.W.4 and P.W.5, though attempted to be projected as eye witnesses, they state that they had come to the scene of occurrence after hearing about the accident and hence, their evidence is of no use. P.W.6 and P.W.7, mahazar witnesses admit that they signed in the paper written by the Police and they were not aware of what has been written in it. P.W.10 was incharge of the respondent Police Station only on the date of accident and on the next day, she handed over the case to one Mr.Sampathkumar, but the said Mr.Sampathkumar has not been examined as witness in this case. Further, Postmortem report and Motor Vehicle Inspector report, namely, Ex.P8 and Ex.P9 were marked through Investigating Officer and the same has not been marked as per the procedure. Hence, the evidentiary value of the documents becomes doubtful. Ex.P7 is only a copy of the route permit and nothing more. No witness had identified that the petitioner had driven the vehicle and caused accident, which causes doubt in the case of the prosecution. Further, except the present case the petitioner had unblemished record and hence, this Court is inclined to suspend the Substantive Sentence of Imprisonment alone till the disposal of the revision petition.



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6. Accordingly, till the disposal of the revision petition, the reliefs of suspension of sentence, exemption from surrendering and bail are granted.

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 learned Chief Judicial Magistrate, Krishnagiri.

7. 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.

8. Accordingly, this Miscellaneous Petitions are ordered.

31.10.2023

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To

1. Inspector of Police,
Kandhikuppam Police Station,
Krishnagiri District.
2. The Principal Sessions Judge,
Krishnagiri,
Krishnagiri District.
3. The Chief Judicial Magistrate,
Krishnagiri,
Krishnagiri District.
4. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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