



Crl.M.P.No.16490 of 2023 in Crl.R.C.No.1726 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.11.2023

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.16490 of 2023 in  
Crl.R.C.No.1726 of 2023

Santhoshkumar,  
S/o.Kathirvel.

... Petitioner

Vs.

State Rep. by  
Station House Officer,  
Cuddalore O.T Police Station,  
Cuddalore District.  
(Crime No.17 of 2019).

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C., to suspend the sentence imposed on petitioner by judgment dated 11.09.2023 made in C.A.No.3 of 2023 passed by the learned I Additional District & Sessions Judge, Cuddalore in confirming the judgment of the Trial Court dated 29.12.2022 in C.C.No.766 of 2019 passed by Learned Judicial Magistrate No.II, Cuddalore, Cuddalore District, wherein convicted the petitioner under Section 394 IPC for the period of three years simple imprisonment and to pay a fine of Rs.2,000/-, in default to undergo simple imprisonment for one Month and enlarge the petitioner on bail, pending disposal of the above Criminal Revision Petition.

For Petitioner : Mr.M.R.Jothimanian

For Respondent : Mr.A.Damodaran,  
Additional Public Prosecutor



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## ORDER

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This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner/A1, by judgment, dated 11.09.2023 in C.A.No.3 of 2023 passed by the learned I Additional District & Sessions Judge, Cuddalore (lower appellate Court) confirming the judgment of the learned Judicial Magistrate No.II, Cuddalore (trial Court), dated 29.12.2022 in C.C.No.766 of 2019.

2.The petitioner was convicted by the trial Court for offence under Section 394 IPC and sentenced to undergo three years Simple Imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo Simple Imprisonment for one month. Challenging the conviction and sentence of the trial Court, the petitioner preferred an appeal before the lower appellate Court in C.A.No.3 of 2023 and the same was dismissed on 11.09.2023 confirming the judgment of the trial Court. Aggrieved over the same, the present Criminal Revision Case and the Suspension of Sentence.



WEB COPY 3.The petitioner/A1 surrendered before the trial Court on 20.11.2023 and produced the surrender order of the learned Judicial Magistrate No.II, Cuddalore, dated 20.11.2023.

4.The learned counsel for the petitioner submitted that the petitioner is a B.E graduate, due to his association with persons whose antecedents and character is not good, the petitioner got into the trouble. During his education, the petitioner was with his co-classmates and seriously studying. After completion of his course, he was without any job and was moving around in his native. At that time, he got some acquaintance and spent time with them and accompanied the acquaintance. Later on the misadventure of one of the acquaintance, a case registered against the petitioner in Crime No.17 of 2019 and two others/A2 & A3. Since the petitioner's bike was involved in this case, he has been arrayed as accused. He further submitted that as per the evidence of PW1, the petitioner came to the house, stepped in, nothing more. He further submitted that the petitioner's father recently passed away on 07.11.2023 and there are some family rituals with regard to



his father's demise which has to be performed. Despite the same, the petitioner surrendered in obedience to the order of this Court on 20.11.2023.

Hence, he prayed for Suspension of Sentence and bail.

5.The learned Additional Public Prosecutor appearing for the respondent Police submitted that in this case, PW1 is the defacto complainant, on 13.01.2019, the petitioner along with two of his friends, had gone to the house of the defacto complainant on the guise of searching house for rent and asked water for drinking, at that time, one of the accused was standing in the bike outside and two of them entered into the house. A2 put a towel on PW1 and shattered, thereafter, tied her legs with weaving plastic wire and took away gold chain she was wearing. Hence, the defacto complainant lodged the complaint (Ex.P1) and FIR in Crime No.17 of 2019 registered. Two days thereafter, the petitioner and other accused found suspicious during road check, they were caught hold, from them, the gold chain of the defacto complainant recovered. He further submitted that the petitioner committing the offence has been proved by PW1 and the recovery witness namely PW3 and PW4. On the confession of A1, gold chain



recovered from A3. Before the trial Court, PW1 to PW10 examined and Exs.P1 to P13 marked and MO1 and MO2 collected. The trial Court on the evidence and materials, had rightly convicted the petitioner and two others and the same was confirmed by the lower appellate Court. The petitioner had been suffered two concurrent finding, hence, opposed the suspension of sentence.

6.Considering the submissions and on perusal of the materials, it is seen that the petitioner is a college student who completed B.E degree. Due to his acquittance and association, he got into the trouble. In this case, admittedly, the petitioner is a total stranger to PW1. PW1 admitted that two days after the occurrence, the accused were identified in the Police Station which causes concern. Further, the recovery is not from the petitioner. Since the petitioner's bike has been shown to be used in the occurrence, the complicity of the petitioner is inferred. These factors not considered by both the Courts below, which needs re-appreciation.



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. Accordingly, this Miscellaneous Petition is ordered.

22.11.2023  
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To

1. The I Additional District & Sessions Court,  
Cuddalore.
2. The Judicial Magistrate Court No.II,  
Cuddalore.
3. The Superintendent,  
Central Prison, Cuddalore.
4. The Station House Officer,  
Cuddalore O.T Police Station,  
Cuddalore District.
5. The Public Prosecutor,  
High Court, Madras.



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M. NIRMAL KUMAR., J.

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