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*Crl.M.P.No.17356 of 2023
in Crl.R.C.No.1841 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.11.2023

CORAM:

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

Crl.M.P.No.17356 of 2023
in
Crl.R.C.No.1841 of 2023

1.Arunagiri
2.Balu @ Balachandran ... Petitioners/Accused 1 & 2

Vs.

State represented by
The Sub Inspector of Police,
Gingee Police Station,
Villupuram District.
Crime No.714/2013. ... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 397(1) of Cr.P.C to suspend the sentence passed in C.A.No.63 of 2023 dated 29.09.2023, on the file of the I Additional Sessions Judge, Tindivanam, confirming the conviction made in C.C.No.115 of 2014, dated 16.06.2023, on the file of the Judicial Magistrate, Gingee and enlarge the petitioner on bail, pending disposal of the Crl.R.C.No.1841 of 2023, on the file of this Court.

For Petitioners : Mr.V.K.Sathiamurthy

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioners, seeking suspension of sentence of imprisonment imposed by the learned Judicial Magistrate, Gingee by judgment dated 16.06.2023 made in C.C.No.115 of 2014 and confirmed by the learned I Additional District and Sessions Judge, Tindivanam in C.A.No.63 of 2023 dated 29.09.2023 and enlarge the petitioners on bail pending disposal of the above revision.

2. The petitioners are accused in C.C.No.115 of 2014 for offences under Sections 294(b), 323, 324, 326 and 506(ii) of IPC. The trial Court convicted the petitioners for offences under Sections 323, 324 and 326 r/w 34 of IPC and acquitted them for offence under Sections 294(b) and 506(ii) of IPC. The petitioner/A1 was convicted and sentenced to undergo three years simple imprisonment and to pay a fine of Rs.1,000/- for offence under Section 326 r/w. 34 of IPC. The petitioner/A2 was convicted and sentenced to undergo three years simple imprisonment and to pay a fine of Rs.1,000/- for offence under Section 326 of IPC and three years simple imprisonment for offence under Section 324 of IPC. The sentences were ordered to be run concurrently. Aggrieved against the same, the petitioners preferred an appeal



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before the learned I Additional District and Sessions Judge, Tindivanam in C.A.No.63 of 2023. The learned Sessions Judge, by judgment dated 29.09.2023 dismissed the appeal confirming the conviction and sentence passed by the trial Court in respect of A1. In respect of A2, the Lower Appellate Court confirmed the conviction and sentence for offence under Section 326 IPC but modified the sentence from three years to one year for offence under Section 324 IPC. Against which, the petitioners/accused 1 & 2 have filed Crl.R.C.No.1841 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.

3. Before the trial Court, on the side of prosecution PW1 to PW8 examined and marked Exs.P1 to P9. On the side of the defence Ex.D1 marked. On conclusion of the trial, the trial Court convicted the petitioners as stated above.

4. The contention of the petitioner is that in this case PW1 and PW2 are projected as injured witnesses. PW3 and PW4, who are neighbours and relatives of PW1 and PW2, have been projected as eyewitnesses to the occurrence. PW5 is the Doctor, PW6 is the Observation Mahazar witness,



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PW7 is the Special Sub Inspector of Police, who registered the FIR and PW8 is the Investigating officer. Learned counsel submitted that the motive attributed is that PW1's brother had taken a loan from the first petitioner, thereafter he went to Bangalore and not returned to the village. The petitioners went to the house of PW1 demanding money, at that time, there was a flimsy argument arose between them and the petitioners said to have used stick, stone and attacked PW1 and PW2. In this case, admittedly, material objects (M.Os.) not seized. PW1 in his evidence states that material objects were available in the scene of occurrence but the investigating officer gave no answer for the same. The occurrence is said to have been taken place on 11.11.2013 but the FIR and the complaint reaches the Court only on 13.12.2012, after the arrest of the accused and for this delay there is no reason or explanation given. He further submitted that PW5 is the Doctor, who issued the Accident Register/Exs.P3 and P4. No wound certificate has been produced and no X-Ray or report has been produced to support the conviction of the petitioners under Section 326 IPC. Further, referring to paragraphs 11 and 12 of the Lower Appellate Court judgment submitted that the reason given by the Lower Appellate Court that non recovery of weapon and further delay in forwarding the complaint is not fatal to the case of the



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prosecution is not proper. He further submitted that there is no reason given by PW8/Investigating officer with regard to Ex.D1, the FIR registered at the instance of one Thilakavathy, relative of the petitioners in which PW1 and PW2 found to be aggressors. These factors have not been considered by both Trial Court and Lower Appellate court. He further submitted that the petitioners are in prison. Further, the petitioners have arguable points and fair chance of success in this revision. Hence, he prays for granting suspension of sentence to the petitioners.

5. Learned Additional Public Prosecutor submits that PW5/Doctor, who treated PW1 and PW2, clearly stated about the injuries recorded in the AR copy. The evidence of Doctor is sufficient to prove that PW1 and PW2 suffered grievous injuries at the hands of the petitioners. Further, PW3 and PW4, who are neighbours and relatives have corroborated the evidence of PW1 and PW2. PW5/Doctor confirmed that PW4 brought the injured to the hospital and in the AR copy it has been recorded that PW1 and PW2 were assaulted using stick, stone and hands. The injuries have been recorded in the AR copy. The trial Court on the evidence of PW1 and PW2, which is corroborated by the evidence of PW3 and PW4, medical evidence Exs.P3



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and P4, had rightly convicted the petitioners. The Lower Appellate Court on re-appraisal, found the petitioners' contentions unsustainable but modified the sentence as against A2 for offence under Section 324 IPC and dismissed the appeal. He further submitted that the maximum sentence imposed against the petitioners are for three years. The petitioners are in prison from the date of judgment. Hence, prays for dismissal of the petition.

6. Considering the submissions made and on perusal of the material, it is an admitted case that Ex.D1/FIR registered on the complaint of one Thilakavathy for the incident, which taken place at the same time, in which, PW1 and PW2 are found to be aggressors. PW8/Investigating Officer admits the same but not taken any steps to investigate further, which is a clearly violation of Rule 566-A of Police Standing Order. In this case, PW5 is a Casualty Doctor and no medical records like X-Ray, Wound certificate produced but injuries marked in AR copy/Exs.P3 and P4. In the AR copy, various material objects said to have been used as weapons in attacking PW1 and PW2 is recorded. But the same have not been seized and produced before the Court. These factors have not been considered by the trial Court as well as Lower Appellate Court. This Court finds that the conviction of the



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petitioners under Section 326 IPC may not be sustainable and needs modification. Further taking note of the fact that there are arguable points involved in this revision and it would take some time for the revision to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioners.

7. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioners are suspended till the disposal of the revision and the petitioners are ordered to be enlarged on bail, on condition that they shall execute a bond for a sum of Rs.5,000/- (Rupees Five Thousand only) each, with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Gingee.

8. Further, the petitioners shall appear before the Trial Court once in three months at 10.30 a.m. until the disposal of the revision and if they are not able to appear before the Trial Court on that day, they 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 their absence as directed by the Trial Court.



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M. NIRMAL KUMAR, J.

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10. Accordingly, this Criminal Miscellaneous Petition is ordered.

06.11.2023

(2/2)

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Note: Issue Order Copy on 06.11.2023.
To

1.The Sub Inspector of Police,
Gingee Police Station,
Villupuram District.

2.The I Additional Sessions Judge,
Tindivanam.

3.The Judicial Magistrate,
Gingee.

4.The Superintendent,
Central Prison,
Cuddalore.

5.The Public Prosecutor,
High Court, Madras.

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