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Crl.M.P.No.16795 of 2023 in Crl.A.No.1149 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.11.2023

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.16795 of 2023
in Crl.A.No.1149 of 2023

Minnalraja,
S/o.Esagam

... Petitioner

Vs.

1.State represented by
Deputy Superintendent of Police,
Villupuram Sub Division,
Villupuram.

2.Vijaya

... Respondents

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(ii) of Cr.P.C., to suspend the sentence imposed by the Sessions Judge, Special Court for Exclusive Trial of Cases registered under SC/ST (POA) Act, Villupuram in S.C.No.34 of 2022, dated 29.09.2023.

For Petitioner	:	Mr.S.Shankar
For R1	:	Mr.A.Damodaran, Additional Public Prosecutor
For R2	:	No Appearance

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed in the judgment, dated 29.09.2023 in S.C.No.34 of 2022



by the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under SC/ST (POA) Act, Villupuram (trial Court).

2.The conviction and sentence passed against the petitioner by the trial Court are as follows:

- For offence under Section 354(A) IPC, the petitioner is convicted and sentenced to undergo Rigorous Imprisonment for three years.
- For offence under Section 294(b) IPC, the petitioner is convicted and sentenced to undergo Simple Imprisonment for three months.
- For offence under Section 4 of the Tamil Nadu Prohibition of Women Harassment Act, the petitioner is convicted and sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.10,000/-, in default to undergo Rigorous Imprisonment for six months.
- For offence under Section 3(1)(w)(i) of SC/ST (POA) Amendment Act, the petitioner is convicted and sentenced to undergo Simple Imprisonment for six months and to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for one month.
- For offence under Sections 3(1)(r) of SC/ST (POA) Amendment Act, the petitioner is convicted and sentenced to undergo Simple Imprisonment for six months and to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for one month.



- For offence under Sections 3(1)(s) of SC/ST (POA) Amendment Act, the petitioner is convicted and sentenced to undergo Simple Imprisonment for six months and to pay a fine of Rs.1,000/-, in default to undergo Simple Imprisonment for one month.
- For offence under Sections 3(2)(va) of SC/ST (POA) Amendment Act, the petitioner is convicted and sentenced to undergo Rigorous Imprisonment for three years and to pay a fine of Rs.1,000/-, in default to undergo Rigorous Imprisonment for six months.

3. Notice taken to the 2nd respondent/defacto complainant/PW1, Affidavit of Service filed. It is seen that private notice, dated 25.10.2023 served to the 2nd respondent on 28.10.2023. The learned Additional Public Prosecutor through the Inspector of Police, Thiruvannainallur Police Station, Villupuram district served notice to the 2nd respondent who received the same and gave acknowledgement for receipt of notice. Name of the 2nd respondent printed in the cause list. Neither the 2nd respondent nor any counsel appeared on behalf of the 2nd respondent.

4. The contention of the petitioner is that the petitioner has been falsely implicated in this case for the reason that his father was a former



Panchayat Union President and the present Panchayat President is on the choice of the petitioner's father. The present Panchayat President has been opposed by the group of the 2nd respondent and others due to defeat in the Panchayat election. Due to which, there was a motive between the petitioner and the 2nd respondent. Before the trial Court, only the relatives of the 2nd respondent examined. PW1 is the defacto complainant, her brother is PW2, brother-in-law is PW3, PW4 to PW7 are all relatives and hail from the same village and other witnesses are official witnesses. The learned counsel further submitted that in this case, the 2nd respondent projected the case as though she was riding the two wheeler, at that time, the petitioner intercepted, restrained, abused her by calling caste name in public place and slapped her. This is the complaint projected by the 2nd respondent as per Ex.P1 and the case of the prosecution. But during the trial Court, the 2nd respondent turned around and projected the case as though she was a pillion rider and the vehicle was driven by her brother/PW2, at that time, the occurrence had taken place. PW2 also gave improved version as of 2nd respondent/PW1. PW9, the Investigating Officer confirms the contradictions between PW1 and PW2. The genesis of the case becomes



questionable. Hence, the root of the case itself cut, which the trial Court coupled with the motive ought to have considered and acquitted the petitioner. He further submitted that the trial Court had suspended the sentence of the petitioner till today. Hence, prayed for Suspension of Sentence and bail.

5.The learned Additional Public Prosecutor appearing for the respondent Police filed counter and submitted that on the complaint of the 2nd respondent, the case registered against the petitioner. When the 2nd respondent was riding two wheeler, the petitioner restrained her, abused her by calling her caste name in public place. Though it might be a motive for Panchayat election, the petitioner knowingly abused the 2nd respondent by using her caste name in public place and thereby, committed the offence. This aspect has been confirmed by the other witnesses present in the scene of occurrence. Though they are objected as hearsay witnesses, the trial Court considered the same and convicted the petitioner. He further submitted that the points raised by the petitioner were raised during trial and the trial Court considered the same in all aspects, rejected the petitioner's



contention, convicted him. He further submitted that the petitioner has got no previous case of similar in nature and the trial Court had suspended the sentence of the petitioner till today.

6.Considering the submissions and on perusal of the materials, it is the 2nd respondent/PW1 in the complaint (Ex.P1) stated that when she was riding the two wheeler, the petitioner intercepted, restrained her and abused her by calling caste name in public place, and slapped her. In the trial Court, the 2nd respondent projected the case as though she was a pillion rider and the two wheeler rode by her brother/PW2, at that time, the occurrence had taken place. This contradiction is confirmed by the Investigating Officer/PW9. When the foundation of the case itself becomes shaky, doubtful, the judgment of the trial Court needs reconsideration.

7.Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal 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



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each for a like sum to the satisfaction of the trial Court.

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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 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.

9.Accordingly, this Criminal Miscellaneous Petition is ordered.

15.11.2023
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To

- 1.The Special Court for Exclusive Trial of Cases registered under SC/ST (POA) Act, Villupuram.
- 2.The Deputy Superintendent of Police, Villupuram Sub Division, Villupuram.



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M. NIRMAL KUMAR., J.

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3.The Public Prosecutor,
High Court, Madras.

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