



Crl.M.P.No.18281 of 2023 in Crl.R.C.No.1959 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.12.2023

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.18281 of 2023
in Crl.R.C.No.1959 of 2023

Mohamed Raffic,
S/o.Gulam Thasthagir

... Petitioner

Vs.

State by Inspector of Police,
C-2 Elephant Gate Police Station,
Traffic Investigation Wing,
Chennai 600 079.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 397(1) of Cr.P.C., to suspend the sentence of one year Rigorous Imprisonment imposed on the petitioner for the offence under Sec.304(A) I.P.C in C.A.No.75 of 2020 by the judgment dated 15.07.2022 on the file of Principal Sessions Court, Chennai, confirming the conviction and sentence imposed by the III Metropolitan Magistrate, G.T., Chennai in C.C.No.3115 of 2017 in the judgment dated 21.02.2020 and release him on bail pending disposal of the Criminal Revision Case.

For Petitioner : Mr.K.Subburam
For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Principal Sessions Judge,



Crl.M.P.No.18281 of 2023 in Crl.R.C.No.1959 of 2023

Chennai (lower appellate Court) in Crl.A.No.75 of 2020, dated 15.07.2022 confirming the judgment of the learned III Metropolitan Magistrate, George Town, Chennai (Trial Court) in C.C.No.3115 of 2017, dated 21.02.2020 till the disposal of the main Criminal Revision Case.

2.The conviction and sentence imposed by the Trial Court against the petitioner are as follows:

- For offence under Section 304(A) IPC, the petitioner to undergo one year Rigorous Imprisonment and to pay a fine of Rs.3,000/- in default to undergo two months Simple Imprisonment.
- For offence under Section 184 of Motor Vehicles Act, the petitioner to pay a fine of Rs.1,000/-, in default to undergo one month Simple Imprisonment.
- For offence under Section 3 r/w 181 of the Motor Vehicles Act, the petitioner to pay a fine of Rs.500/-, in default to undergo two weeks Simple Imprisonment.

3.During trial, on the side of the prosecution, eleven witnesses examined as PW1 to PW11 and twelve documents marked as Exs.P1 to P12. On the side the of defence, no witness examined and no document



marked.

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4.The learned counsel for the petitioner submitted that in this case, three witnesses projected as eye witnesses to the occurrence, namely, PW1 to PW3, in which, PW1 is the injured witness. The case projected is that on 21.06.2017, at about 11.45 a.m., PW1, a tea vendor, was taking tea from his shop to office and when he was walking on the sides of the road, ahead of him an elderly person was going. At that time, Auto driven by the petitioner came in rash and negligent manner dashed against the elderly person as well as PW1 who was standing near the platform. Due to which, elderly person sustained injuries on his head, face and left ear and admitted in Stanley Hospital and thereafter taken to Sims Hospital at Vadapalani and died on 29.06.2017. The specific case is that first the Auto hit the elderly person and thereafter, hit PW1. Due to which, PW1 also sustained injuries on his left hand, right leg and on his head and thereafter, he lodged the complaint to the respondent Police and case registered against the petitioner. The evidence of PW2 and PW3 is that windshield glass of the auto pierced on the face of PW1, due to which, he sustained oozing injuries. But in this case, PW1 not visited any Doctor for the injuries sustained and no medical



records produced. Thus, the version of PW2 and PW3 becomes doubtful as well as the presence of PW1 in the scene of occurrence. PW1 in his complaint states that he and the elderly person were away from the platform standing in the road which itself might be a contributory factor which the Courts below failed to consider.

5.The learned counsel further submitted that in this case, the Observation Mahazar (Ex.P2) witness PW4 confirms that apart from signing the same, he is not aware about the details in it. The version of PW5, Casualty Medical Officer of Stanley Hospital is that the occurrence took place at 10.30 a.m., but PW1 in his complaint states that the occurrence took place at about 11.45 a.m., and PW2 and PW3 at about 11.30 a.m. If the occurrence had actually taken place on the time mentioned by PW1 to PW3, then the deceased could not have been examined by PW5 at about 10.30 a.m., which is the time recorded in Ex.P3 Accident Register. He further submitted that had PW1 sustained injury, there could have been charges under Section 337 IPC but in this case, no charge under Section 337 IPC. In view of the same, the evidence of PW1 to PW3 and PW7 cannot be



accepted becomes highly doubtful. The Motor Vehicle Inspector/PW8 evidence is that the auto sustained damage in its centre part which is contrary to the evidence of the eye witnesses. PW9, Sub Inspector of Police states that a written complaint lodged by PW1, on the other hand PW1 states that he gave oral complaint which was recorded by PW9. Thus, the time on which the case came to be registered is become highly doubtful. Hence, prays for suspension of sentence.

6.The learned Additional Public Prosecutor appearing for the respondent Police on the other hand submitted that on 21.06.2017, at about 11.45 a.m., the petitioner driven the auto in the rash and negligent manner and dashed against the elder person who was walking on the sides of the road. PW1 who was following the deceased, clearly spoken about the accident and the manner in which the petitioner driven the auto. PW5, Doctor in the Accident Register (Ex.P5) recorded that it is the petitioner who brought the injured to the hospital and the arrest of the petitioner is also on the same day of occurrence which confirms that the petitioner is the person who had driven the auto and caused the accident. He further submitted that



the petitioner has got no authorized license and the auto was also not properly insured. Driving the auto in a public road without proper care and causing death and injury to the innocent people cannot be condoned lightly. In this case, A2 is the owner of the auto, during trial, he admits his offence. In view of the same, the petitioner's contention to be viewed with caution.

7.It is further submitted that PW1, PW2 and PW3 have nothing against the petitioner and they are also not related to the deceased. They have clearly spoken about the manner in which the petitioner driven the auto and caused the accident. PW4 is the Observation Mahazar witness and PW5 and PW7 are the Doctors who treated the deceased. PW8/Motor Vehicle Inspector states about the damage of the vehicle and further confirms that there was no mechanical defect in the auto. PW9/Investigating Officer registered the case, took up investigation and thereafter, PW10 and PW11 conducted further investigation and filed the charge sheet. The trial Court on the evidence and materials rightly convicted the petitioner as stated above. Hence, he strongly opposes this petition.

8.Considering the submissions and on perusal of the materials, it is



seen that PW9/Sub Inspector of Police who registered the case states that PW1 gave written complaint, based on which a case in Crime No.76 of 2017 registered. PW1 on the other hand states that he informed the Police about the occurrence orally which they had noted down as a complaint. Thus, there are contrary versions with regard to registration of the case. Likewise, the evidence of PW1 is that he and the deceased were standing near the platform and the accident had not taken place on the platform. The persons stood away from the platform on the road exposes themselves and contributes to the accident. In this case, the evidence of PW2 and PW3 is that PW1 sustained blood injuries due to windshield glass piercing on his face. PW1 not visited any hospital and there is no medical evidence to the same. The version of PW1 to PW3 are contradictory to each other and highly doubtful. The trial Court as well as the lower appellate Court not considered the same properly, hence, both the judgements to be reconsidered.

9.Accordingly, the Substantive Sentence of Imprisonment imposed on



Crl.M.P.No.18281 of 2023 in Crl.R.C.No.1959 of 2023

the petitioner is suspended till the disposal of the 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.

10.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 criminal 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. Accordingly, this Miscellaneous Petition is ordered.

11.12.2023
(2/2)

vv2

Note: Issue Order Copy on 13.12.2023.



Crl.M.P.No.18281 of 2023 in Crl.R.C.No.1959 of 2023

To
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- 1.The Principal Sessions Court,
Chennai.
- 2.The III Metropolitan Magistrate Court,
George Town, Chennai.
- 3.The Inspector of Police,
C-2 Elephant Gate Police Station,
Traffic Investigation Wing,
Chennai 600 079.
- 4.The Superintendent of Police,
Central Prison, Puzhal.
- 5.The Public Prosecutor,
High Court, Madras.



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Crl.M.P.No.18281 of 2023 in Crl.R.C.No.1959 of 2023

M. NIRMAL KUMAR., J.

vv2

Crl.M.P.No.18281 of 2023 in
Crl.R.C.No.1959 of 2023

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(2/2)