



Crl.M.P.No.18377 of 2023 in Crl.R.C.No.1975 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.18377 of 2023
in Crl.R.C.No.1975 of 2023

Dhinakaran

... Petitioner

Vs.

State, Rep. by
The Sub-Inspector of Police,
Yercaud Police Station,
Salem District.
(Crime No.129/2015).

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 397(1) of Cr.P.C., to suspend the sentence imposed on the petitioner passed by the I Additional District and Sessions Judge, Salem in C.A.No.87 of 2022, by judgment, dated 24.8.2023, confirming the conviction and modifying the sentence imposed by the District Munsif cum Judicial Magistrate, Yercaud, Salem District in C.C.No.7 of 2022, by judgment, dt.07.09.2022.

For Petitioner : Mr.B.Vasudevan

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



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ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned I Additional District and Sessions Judge, Salem (lower appellate Court) in Crl.A.No.87 of 2022, dated 24.08.2023 confirming the judgment of the learned District Munsif-cum-Judicial Magistrate, Yercaud, Salem (Trial Court) in C.C.No.07 of 2022, dated 07.09.2022 till the disposal of the main Criminal Revision Case.

2.The petitioner was convicted by the Trial Court and sentenced to undergo three years imprisonment and to pay a fine of Rs.1,000/- in default to undergo three years imprisonment for offence under Section 380 IPC. For offence under Section 454 IPC, the petitioner to undergo three years imprisonment and to pay a fine of Rs.1,000/-, in default to undergo three months imprisonment. Aggrieved over the same, the petitioner preferred an appeal before the lower appellate Court in Crl.A.No.87 of 2022. The lower appellate Court, by judgment, dated 24.08.2023 allowed the appeal in part confirming the conviction and modifying the sentence to the effect that the petitioner to undergo two years Rigorous Imprisonment for each offence under Sections 380 and 457 IPC. Challenging the same, the present



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Criminal Revision Case is filed.

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3.The learned counsel for the petitioner submitted that in this case, there are totally six witnesses, of which, PW4 and PW5 are independent witnesses and neighbours near the scene of occurrence but they have not supported the case of the prosecution. The case projected against the petitioner is that the defacto complainant/PW1 recently married and running a tea shop. On the date of occurrence i.e., 05.05.2015, PW1 was in his tea shop. At about 12.00 noon, when his mother/PW2 returned from tea shop to her house, she found the main door of the house and bureau broken and also found missing of seven small gold rings and one dollar chain. On the next day, on 06.05.2015, PW1 lodged the complaint to the respondent Police which is Ex.P1. PW1's case is that he was informed about the trespass and theft by his mother/PW2. On the other hand, PW2 admits that she has not seen the occurrence proper. When she visited the house, she found the main door broken and missing of jewels and she saw the petitioner moving around the place. The petitioner hails from the same place is not in dispute, which PW1 admits. PW3, brother of PW1 is projected as witness



for the Observation Mahazar (Ex.P6), Rough Sketch (Ex.P7), arrest and recovery. PW3 states that apart from signing the same in three places, he is not aware about its details. Further, PW3 neither identified the missing jewels (MO1 and MO2) nor Exs.P10 & P11. In view of the same, the arrest and recovery become doubtful. He further submitted that the petitioner has been falsely implicated in this case and the petitioner has got no bad antecedents. Added to it, the petitioner has not come under any adverse notice either before the occurrence or after the occurrence. The Trial Court as well as the Lower Appellate Court not considered the evidence and materials in proper perspective. Hence, prays for suspension of sentence and bail.

4.The learned Additional Public Prosecutor appearing for the respondent Police submitted that in this case, on the complaint of PW1, FIR (Ex.P5) came to be registered by the respondent Police. PW2, the mother of PW1, when returned back home, she saw main door broken and bureau in open condition and also found missing of gold jewels, cash and articles. PW2 also saw the petitioner moving in a suspicious manner. On registration



of FIR (Ex.P5), investigation commenced and found the petitioner was being involved in the offence. During investigation, the petitioner gave voluntary confession, pursuant to which, MO1 and MO2 recovered and photographed (Ex.P11). Hence, the petitioner's involvement in committing the offence had been proved by the evidence of PW1 to PW3 and document Ex.P11 and material objects (MO1 and MO2). The Trial Court had rightly convicted the petitioner and the lower appellate Court allowed the appeal in part modifying the conviction of the petitioner from three years to two years. He fairly submitted that the petitioner has got no bad antecedents except the above case.

5.Considering the submissions and on perusal of the materials, it is seen that PW1 and PW2 admit that both of them have not seen the occurrence proper. In this case, the other circumstances to be looked into is arrest, confession and recovery which through PW3 attempted to be projected. PW3 is none other than the brother of PW1. Except his signature (Exs.P3 & P4), he has not spoken anything with regard to manner of arrest, particulars of confession or the recovery. The material objects (MO1 and



MO2) have been marked through PW1 and Exs.P10 and P11 marked through the Investigating Officer.

6.In view of the arrest, confession and recovery are doubtful and thereby, the involvement of the petitioner becomes questionable and further considering that the petitioner has got no bad antecedents, this Court is inclined to suspend the sentence of the petitioner till the disposal of the main criminal revision case.

7.Accordingly, the Substantive Sentence of Imprisonment imposed on 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.

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 criminal revision case and if he is not able to appear before



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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.

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To

- 1.The I Additional District and Sessions Court,
Salem.
- 2.The District Munsif-cum-Judicial Magistrate Court,
Yercaud, Salem.
- 3.The Sub-Inspector of Police,
Yercaud Police Station,
Salem District.
- 4.The Superintendent of Police,
Central Prison, Salem.
- 5.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR., J.

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