



*Crl.M.P.Nos.19947 and 19945 of 2023
in Crl.R.C.No.2224 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2023

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

**Crl.M.P.Nos.19947 and 19945 of 2023
in
Crl.R.C.No.2224 of 2023**

Gopinath

... Petitioner/Accused

Vs.

**State represented by
The Inspector of Police,
Pudhupalayam Police Station,
Tiruvannamalai District.**

... Respondent

PRAYER: Criminal Miscellaneous Petitions filed under Sections 397(1) & 482 of Cr.P.C to suspend the sentence in judgment dated 16.09.2022 in C.C.No.28 of 2013 on the file of learned Judicial Magistrate, Chengam, Tiruvannamalai, confirmed by judgment dated 11.09.2023 in Crl.A.No.51 of 2022 on the file of the learned Additional District and Sessions Judge, Tiruvannamalai convicting and sentencing the petitioner herein to undergo 3 months simple imprisonment for offences under Sections 279 and 337 of IPC, 1860 and one year simple imprisonment for offence under Section 304(a) of IPC and enlarge the petitioner on bail pending disposal of the above Criminal Revision and to exempt the petitioner from surrendering before the Lower Court.



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For Petitioner : Mr.G.Krishnamurthy

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

COMMON ORDER

These Criminal Miscellaneous Petitions have been filed by the petitioner, seeking to suspend the sentence of imprisonment imposed on him in C.C.No.28 of 2013 by a judgment dated 16.09.2022 passed by the learned Judicial Magistrate, Chengam, Tiruvannamalai District and confirmed by the learned Additional District and Sessions Judge, Tiruvannamalai made in Crl.A.No.51 of 2022 dated 11.09.2023 and enlarge the petitioner on bail pending disposal of the above revision and to exempt the petitioner from surrendering before the trial court pending disposal of the above revision.

2.The petitioner/accused in C.C.No.28 of 2013 was convicted by the Trial Court by judgment dated 16.09.2022 for offence under Sections 279, 337 and 304A of IPC and sentenced to undergo three months simple imprisonment for offences under Sections 279 and 337 IPC (each offence) and one year simple imprisonment for offence under Section 304A IPC. Aggrieved against the same, he preferred an appeal before the learned



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Additional District and Sessions Judge, Tiruvannamalai in Crl.A.No.51 of 2022. The learned Sessions Judge, by judgment dated 11.09.2023, dismissed the appeal confirming the conviction and sentence passed by the trial Court, against which, the petitioner/accused filed Crl.R.C.No.2224 of 2023 along with the instant miscellaneous petitions seeking suspension of sentence and bail.

3.The gist of the case is that on 05.06.2011 at about 7.45 p.m., the de-facto complainant's sister (PW2) and her son Adhitya were returning from the provision shop by walking on the left margin of the road. At that time, a Tata Sumo vehicle bearing registration No.TN-23-AH-6421 driven by the petitioner/accused proceeding from Chengam to Kuilam Village, came in the opposite direction, in a rash and negligent manner, dashed against PW2 and her son, in which, PW2 sustained serious injuries and her son succumbed to the injuries. On the complaint of PW1, above case came to be registered for offence under Sections 279, 337 and 304A of IPC. PW1 is the eye witness and PW2 is injured eye witness. Both have stated about the manner in which the accident took place. On the complaint of PW1, PW7 registered an F.I.R., took up investigation, visited the scene of occurrence, recorded statement of



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the witnesses including injured witness, conducted inquest on the body of deceased Adhitya, sent the body for postmortem, seized vehicle and sent the vehicle for inspection. After recording the statement of witnesses and collecting reports, charge sheet filed in this case.

4.During trial, on the side of the prosecution, PW1 to PW7 examined and marked Exs.P1 to P9. On the side of the defence, no witnesses examined and no documents marked. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, had convicted the petitioner as stated above, which was confirmed by the Lower Appellate Court.

5.The contention of the petitioner is that in this case, the occurrence took place at the night hours and it is stated that PW1 had seen PW2 and her deceased son Adhitya were walking on the side of the road with the aid of the passing vehicle's light, which is highly improbable. Further, PW1 and PW2 had stated that the vehicle had three rolls after the accident and thereafter it was in a capsized position on the road. The petitioner is said to have been arrested on the next day to the occurrence, i.e., on 06.06.2011 but no injury



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was found on him, which causes some doubt. PW1 and PW2 are distant relatives to the petitioner and they have some motive to implicate the petitioner in this case. Further submitted that in this case neither the Motor Vehicle Inspector nor the post-mortem Doctor examined to prove Exs.P5, P6, P7 and P8 in the manner known to law. The observation mahazar witness/PW6 evidence is that in the blank white paper signature obtained. There is serious infirmity in the case of the prosecution but the Trial Court as well as Lower Appellate Court failed to consider the same. Further submitted that the petitioner has arguable points and fair chance of success in this revision. Hence, he prays for granting suspension of sentence to the petitioner.

6.The learned Additional Public Prosecutor opposes this petition submitting that in this case the young boy Adhitya succumbed to the injuries due to the accident caused by the petitioner. PW2/mother and her son Adhitya walking on the side of the road after purchasing some provisions. At that time the Tata Sumo vehicle driven by the petitioner came in a rash and negligent manner in opposite direction and hit PW2 and her son Adhitya. Thereafter the vehicle capsized after three rolls. PW1, who waited for PW2



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had seen the occurrence. PW1 is the eye witness and PW2 is injured eye witness. The other witnesses present in the scene of occurrence, namely, PW3 to PW5 are hearsay witnesses. They spoken about the immediate fact after the accident. The vehicle found in a capsized stage would prove that the vehicle was driven in rash and negligent manner. The non examination of Motor Vehicles Inspector, post-mortem Doctor and the Doctor, who treated PW2 is not fatal to the case of the prosecution. The petitioner not objected while marking Ex.P6 to P8 and now questioning the same would not be proper. Hence, prays for dismissal of the petition.

7.Considering the submissions made and on perusal of the material, it is seen that according to PW1, the accident took place on the edge of the road but PW2 states that she and her son walking on the side of the road on the mud path. Further, PW1 states that she had seen the accident with the aid of moving vehicles from distance. The presence of PW1 is highly doubtful. As regards PW2, she is an injured witness and the medical records not proved her immediate treatment. The medical records have been marked through Investigation Officer. No Doctor examined and no reason given as to why Doctor has not been examined. Added to it, Motor Vehicles Inspector also



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not examined. The petitioner was arrested on the next day of accident without any brushes or injuries, which would defy the manner in which accident took place and the petitioner found without any injuries. In view of the same, this Court finds that the finding of the Courts below needs to be reconsidered. 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 petitioner.

8. Accordingly, the reliefs of suspension of sentence, exemption from surrendering and bail are granted on the following conditions till the disposal of the above Criminal Revision:

(a) The petitioner/accused 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 learned Judicial Magistrate, Chengam, Tiruvannamalai.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb



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Impressions in the surety bonds and the Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) 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 revision 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, these Criminal Miscellaneous Petitions are ordered.

21.12.2023
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To
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- 1.The Inspector of Police,
Pudhupalayam Police Station,
Tiruvannamalai District.
- 2.The Judicial Magistrate,
Chengam, Tiruvannamalai.
- 3.The Additional District and Sessions Judge,
Tiruvannamalai.
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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