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*Crl.M.P.No.405 of 2024
in Crl.R.C.No.54 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.02.2024

CORAM:

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

Crl.M.P.No.405 of 2024
in
Crl.R.C.No.54 of 2024

Kumaresan
S/o.Vedi

... Petitioner/Accused

Vs.

The State rep by
Inspector of Police,
Karimangalam Police Station,
Dharmapuri District.
(Crime No.91 of 2015)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 397 and 401 of Cr.P.C to suspend the sentence and conviction passed against the petitioner/appellant in the judgment dated 12.12.2023 passed by the learned Principal Sessions Judge at Dharmapuri in Crl.A.No.34 of 2022 confirming the judgment and sentence dated 10.10.2020 passed in C.C.No.129 of 2016 on the file of the learned Judicial Magistrate, Palacode, pending disposal of the above Criminal Revision.

For Petitioner : Mr.A.Sakthivel

For Respondent : Mr.R.Kishore Kumar
Government Advocate (Crl. Side)



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence of imprisonment imposed on him in C.C.No.129 of 2016 by a judgment dated 10.10.2022 passed by the learned Judicial Magistrate, Palacode and confirmed by the learned Principal Sessions Judge at Dharmapuri in Crl.A.No.34 of 2022 dated 12.12.2023 and enlarge the petitioner on bail pending disposal of the above revision.

2.The petitioner/accused in C.C.No.129 of 2016 was convicted by the trial Court by judgment dated 10.10.2022 for offence under Section 279, 337 (3 counts) and 304A (2 counts) of IPC and sentenced to undergo one month simple imprisonment for offence under Section 279 IPC, one month simple imprisonment for each count for offence under Section 337 IPC and one year simple imprisonment for each count for offence under Section 304A of IPC. Aggrieved over the same, he preferred an appeal in Crl.A.No.34 of 2022 before the learned Principal Sessions Judge, Dharmapuri. The learned Sessions Judge, by judgment dated 12.12.2023, dismissed the appeal confirming the conviction and sentence passed by the trial Court, against



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which, the petitioner preferred a revision in Crl.R.C.No.54 of 2024 before this Court along with suspension of sentence petition.

3. During trial, on the side of the prosecution, PW1 to PW11 examined and marked Exs.P1 to P13. 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 Appellate Court.

4. The contention of the learned counsel for petitioner is that the petitioner was driving a Crane in the Dharmapuri to Krishnagiri National Highway Road. While he was passing near Agaram Koot Road at about 11.40 p.m., PW1 driver of the State Express Transport Corporation bus proceeding towards Salem, suddenly parked the bus on the left side of the National Highways. The bus was suddenly stopped without any indication and brake light was not showing and without any reflectors on the bus. The petitioner was driving a Crane which takes some time to bring down the momentum and stop the vehicle, brakes cannot be applied instantly, if applied, the crane would get capsized. PW1/driver of the bus suddenly



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stopped the bus in the middle of the road and in the dark and contributed for the accident. He further submitted that the admitted case of the prosecution is that all the witnesses, namely, PW1 to PW4 were travelling in the bus, who were seated facing front of the bus and the accident happened in the rear side, hence at the dark of the night witnessing the accident is not possible. He further submitted that Ex.P4/rough sketch confirms that the Bus parked in the National Highway. Though PW1 would say that the vehicle was parked in the service road, from Ex.P4/rough sketch, it is seen that Bus parked in the Highway, PW11/Investigating Officer confirms the same. Hence, the accident has been caused due to the negligence of PW1. The vehicle driven by petitioner being a Crane, there is no reason to say the Crane was driven in rash and negligent manner. Though speed is not relative factor, applying sudden brake for Crane cannot be done. Further in this case observation mahazar/Ex.P1, rough sketch/Ex.P4 marked through the Investigating Officer/PW11. The Trial Court failed to consider the same. Further submitted that the petitioner surrendered before the learned Judicial Magistrate, Palacode on 20.02.2024. He has produced the copy of surrender petition and the order passed therein. Further submitted that the petitioner has arguable points and fair chance of success in this revision. Hence, he prays for



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granting suspension of sentence to the petitioner.

5.The learned Government Advocate (Crl. Side) on the other hand filed his counter and submitted that the case of the prosecution is that on 22.02.2015 at about 11.40 p.m., in Dharmapuri to Krishnagiri four way National Highways near Agaram Koot Road when the complainant Prabhakaran, the driver of the bus bearing registration No.TN-29-H- 2287 was driving the bus towards Salem slowly and parked on the left edge of the road to board/alight passengers, the accused driver of crane vehicle bearing registration No.TN-20-BZ-2584 drove the same in a rash and negligent manner in the same direction and hit behind the bus and caused accident, due to which, three passengers sustained simple injuries and two passengers died on the spot.

5.1.Further submitted that based on the above, a case registered in Karimangalam Police Station for offence under Section 304 A of IPC. The Inspector of Police went to the scene of occurrence, drew rough sketch, prepared observation mahazar and also examined the witnesses and recorded their statements. During the course of investigation, on 13.04.2015 then Inspector of Police arrested the accused and then produced before the



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Learned Judicial Magistrate, Palacode and sent to remand for judicial custody.

5.2.Further submitted that after completion of elaborate and detailed investigation, statements, material evidence recorded and collected, the then the Inspector of Police filed charge sheet against accused before the learned Judicial Magistrate, Palacode and the same was taken cognizance vide C.C.No.129 of 2016. In order to prove the case of the prosecution, the prosecution has examined 11 witnesses and marked 13 exhibits and no material objects marked. On the defence side no witness examined, and no exhibits marked, on conclusion of trial, the learned Judicial Magistrate, Palacode convicted the accused by judgment dated 10.10.2022 in C.C.No.129 of 2016, the appeal by the accused to the Sessions court in C.A.No.34 of 2022 also dismissed. Hence, prays for dismissal of the petition.

6.Considering the submissions made and on perusal of the material available on record, it is seen that PW1 to PW4 seated in the bus facing South. The bus was parked facing North to South. The accident took place on the rear side of the bus. The petitioner, driver of the Crane said to have



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dashed against the bus, which was parked on the National Highways. It is admitted by the I.O./PW11 that bus was parked on the National Highways, which is not a regular bus stop. Further, the TNSTC bus is an express bus made unauthorised stop in the place of occurrence. The indicator of the bus was not glowing and no reflection fixed in the Bus. PW1 not parked the bus on the service road as could be seen from Ex.P4/rough sketch. PW1, who parked the bus suddenly on the National Highways in a no parking zone, is a causing factor for the accident and the petitioner driving Crane cannot apply sudden brake, which would only lead to capsizing of the Crane. In view of the same, this Court finds that the finding of the Courts below needs to be reconsidered. Further, considering the fact that the petitioner surrendered before the trial Court on 20.02.2024, this Court is inclined to suspend the sentence imposed on the petitioner.

7. Accordingly, the relief of suspension of sentence 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



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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, Palacode.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned 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 once in three months at 10.30 a.m. on the first working day of the month, 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.

8. Accordingly, this Criminal Miscellaneous Petition is ordered.

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Note: Issue order copy on 04.03.2024



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- To
1. Inspector of Police,
Karimangalam Police Station,
Dharmapuri District.
 2. The Principal Sessions Judge,
Dharmapuri.
 3. The Judicial Magistrate,
Palacode.
 4. The Superintendent,
Central Prison,
Vellore.
 5. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

rsi

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(2/2)**