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Crl.M.P.No.555 of 2024 in Crl.A.No.70 of 2024

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M.NIRMAL KUMAR, J.

This Criminal Miscellaneous Petition has been filed to suspend the sentence made in judgment, dated 07.12.2023 in C.C.No.1 of 2023 passed by the learned I Additional District Sessions Judge, Namakkal.

2.The conviction and sentence imposed on the accused/A1 to A5 in C.C.No.1 of 2023 are as follows:

- A1 and A3 were convicted for offence under Section 326 IPC and sentenced to undergo six months Simple Imprisonment each and to pay a fine of Rs.500/- each, in default to undergo four weeks Simple Imprisonment.
- A2, A4 & A5 were convicted for offence under Section 324 of IPC and imposed a fine sentence of Rs.2,000/- each, in default to undergo twelve weeks Simple Imprisonment.
- A1 to A5 were acquitted from the charges under Section 148, 506(ii) r/w 34 of IPC.

Challenging the conviction and sentence, A1 & A3, the petitioners herein have filed the Criminal Appeal and the present petition for suspension of



sentence.

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3.The gist of the case is that the defacto complainant (PW1) and the accused viz., Marappan/A2, his wife Sembaye/A4, their daughter Selvamani/A5, their son-in-law Subramani/A1 and Marappan's friend Subbukounder/A5 are adjacent land owners and they used to share common well in irrigating their fields. Due to which, they had difference of opinion and there was animosity between them. In this background on 29.08.2008, at about 11.00 a.m., the defacto complainant (PW1) heard sound of her goat. When she had gone to find out the reason, she saw A5 beating her goat. When the same was questioned, A5 abused the defacto complainant (PW1) and threatened that if she comes, she would also face the same and scuffle arose. At that time, all the accused with Aruval, Crowbar, Iron Rod and Stick assaulted the defacto complainant (PW1) on her left hand palm finger and all over her body and thereby inflicted cut injuries. The defacto complainant (PW1) sustained blood injuries which was informed to her daughter (PW2), who in turn informed to her husband (PW3) and brother (PW4). Thereafter, they took the defacto complainant (PW1) to the



Crl.M.P.No.555 of 2024 in Crl.A.No.70 of 2024

Government Hospital, Namakkal and thereafter, taken her to Maruthi Hospital, Namakkal where she was treated as inpatient for more than thirty days. The Doctor (PW7) gave treatment and issued Accident Register (Ex.P4) and Wound Certificate (Ex.P5). From the hospital, the information was sent to the respondent Police, who came there, recorded the statement of the defacto complainant (PW1), registered FIR (Ex.P6) in Crime No.356 of 2008. Thereafter, A2 was arrested on 30.08.2008 in presence of the Village Administrative Officer (PW8) and Village Assistant (PW9) and he gave confession statement. On completion of investigation, charge sheet filed before the trial Court.

4.During trial, on the side of the prosecution twelve witnesses examined as PW1 to PW12 and eight documents marked as Exs.P1 to P8. On the side of the defence, no witness examined and no document marked. On conclusion of trial, the trial Court convicted the accused as stated above.

5.The learned counsel for the petitioners submitted that the petitioners have been falsely implicated in the above case since the defacto complainant



Crl.M.P.No.555 of 2024 in Crl.A.No.70 of 2024

(PW1) had motive against them with regard to sharing of common rights in their fields including sharing of well water. The defacto complainant (PW1) admits that earlier, the petitioners family lodged a compliant against her and her family members, for which, an enquiry conducted by the Police and finally, they were advised to approach the civil Court for their relief. But in this case, the said complaint has been suppressed. Further, in this case, the Doctor (PW7) of Maruthi Hospital, Namakkal issued the Accident Register (Ex.P4) and the Wound Certificate (Ex.P5) for the alleged attack. In Ex.P4, it is recorded that seven persons assaulted the defacto complainant (PW1), but who are they and their identity, nothing had been stated. This has been confronted with PW1.

6.The learned counsel further submitted that the other witnesses viz., daughter (PW2), son (PW3) and son-in-law (PW4) are all close relatives to the defacto complainant (PW1) and no independent witness examined during trial. Admittedly, PW2 to PW4 are hearsay witnesses. In this case, though PW5 and PW6 are witnesses to the Observation Mahazar (Ex.P7), except admitting their signature not aware about the contents in it. PW7 and



PW8 are the witnesses for arrest and confession of A1, but there is no recovery of any material object based on the confession. In this case, admittedly, no X-ray or any medical records of the defacto complainant (PW1) produced by the Doctor (PW7). The specific case is that initially, the defacto complainant (PW1) was taken to the Government Hospital, Namakkal, thereafter for better treatment, admitted in Maruthi Hospital, Namakkal, but no medical records from any other hospitals produced. Further, the trial Court acquitted the petitioners from the charges under Section 148, 506(ii) r/w 34 of IPC. He further submitted that the trial Court already suspended the sentence of the petitioner. Hence, prays for suspension of sentence.

7.On the other hand, the learned Additional Public Prosecutor appearing for the respondent Police submitted that the defacto complainant (PW1) is the injured witness who was attacked at the hands of the petitioners and other accused. The defacto complainant (PW1) and the accused are adjacent land owners and they are having dispute for quite some time with regard to sharing of common well. Prior to this incident, a



Crl.M.P.No.555 of 2024 in Crl.A.No.70 of 2024

complaint has been lodged by the petitioners against the defacto complainant and the Police called both the group for enquiry and advised them to approach the civil Court for their relief. On 29.08.2008, the petitioners assaulted the defacto complainant (PW1) and caused grievous injuries. PW7 is the Doctor treated the injured (PW1) and gave Accident Register (Ex.P4) and Wound Certificate (Ex.P5) confirming the injuries. In this case, the injured witness (PW1) clearly stated about the attack at the hands of the petitioners. PW2 to PW4 were informed by the defacto complainant (PW1) about the petitioners' attack and the same is confirmed by the medical evidence (PW7). PW5 and PW6 are the Observation Mahazar witness (Ex.P7). PW8 and PW9 are the witnesses for arrest and confession. All the witnesses supported the case of the prosecution. PW10 received the complaint from the defacto complainant (PW1) and registered FIR (Ex.P6) in Crime No.356 of 2008 for offence under Sections 147, 148, 324, 323, 506(i) of IPC. On the evidence of PW1 to PW12 and materials Exs.P1 to P8, the trial Court convicted the petitioners as stated above. He further submitted that the trial Court already suspended the sentence of the petitioner.



Crl.M.P.No.555 of 2024 in Crl.A.No.70 of 2024

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8.Considering the submissions and on perusal of the materials, it is seen that in this case, five persons were tried viz., the petitioners/A1 & A3 are A1, A4 & A5. A1 and A3 were convicted for offence under Section 326 IPC and sentenced to undergo six months Simple Imprisonment each. As regards A2, A4 & A5 are concerned, they were imposed with fine sentence alone. In this case, no material objects seized or recovered based on the confession statement. Added to it, no medical records viz., X-ray or scan report produced confirming the fracture and grievous injuries sustained by the defacto complainant (PW1). Hence, the conviction of the petitioners to be reconsidered.

9.Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioners are suspended till the disposal of the criminal appeal and the petitioners are ordered to be enlarged on bail, on condition that they shall execute a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the trial Court.



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Crl.M.P.No.555 of 2024 in Crl.A.No.70 of 2024

M.NIRMAL KUMAR, J.

vv2

10.The 1st petitioner shall appear before the Trial Court on the first working day of once in three months at 10.30 a.m. till the disposal of the criminal 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. Accordingly, this Miscellaneous Petition is ordered.

12.01.2024

vv2

Crl.M.P.No.555 of 2024
in Crl.A.No.70 of 2024