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*Crl.M.P.No.2773 of 2024
in Crl.R.C.No.687 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2024

CORAM:

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

Crl.M.P.No.2773 of 2024
in
Crl.R.C.No.687 of 2023

Venkatesan
S/o.Madhu Gounder

... petitioner/A1

Vs.

The State by
Inspector of Police,
Deevattipatti Police Station,
Salem District.
(Crime No.161 of 2015)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) of Cr.P.C to suspend the sentence passed in the judgment dated 09.02.2023 by the learned I Additional District and Sessions Judge, Salem in C.A.No.48 of 2022 and for modifying sentence for offence under Section 392 Cr.P.C. to 5 years instead of 7 years and to pay fine of Rs.3,000/0 in default to undergo 1 year and confirming the sentence for offence under Section 452 for 3 years and to pay fine of Rs.2,000/- in default, 6 months simple imprisonment by modifying the sentence passed in S.C.No.34 of 2017 by judgment dated 22.04.2022 for the offence under Section 392 Cr.P.C. to 7 years and confirming to pay fine of Rs.3,000/- in default 1 year simple imprisonment



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and for offence under Section 452 for 3 years and to pay fine of Rs.2,000/-, 6 months simple imprisonment under Section 392 IPC passed by the learned Assistant Sessions, Omalur, Salem District dated 22.04.2022 and enlarge him on bail, pending disposal of the above Criminal Revision.

For Petitioner : Mr.M.G.Udayashankar

For Respondent : Mr.C.E.Pratap
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence of imprisonment imposed on him in S.C.No.34 of 2017 by a judgment dated 22.04.2022 passed by the learned Assistant Sessions Judge, Omalur, Salem and confirmed by the learned I Additional District and Sessions Judge, Salem made in Crl.A.No.48 of 2022 dated 09.02.2023 and enlarge the petitioner on bail pending disposal of the above revision.

2.The petitioner/A1 in S.C.No.34 of 2017 was convicted by the trial Court along with one Thangam @ Krishnan/A2 by judgment dated 22.04.2022 for offence under Sections 452 and 392 of IPC and sentenced to undergo 3 years rigorous imprisonment and to pay a fine of Rs.2,000/- for



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offence under Section 452 IPC and 7 years rigorous imprisonment and to pay a fine of Rs.3,000/- for offence under Section 392 of IPC. Aggrieved against the same, they preferred an appeal before the learned I Additional District and Sessions Judge, Salem in Crl.A.No.48 of 2022. The learned Sessions Judge, by judgment dated 09.02.2023, altered the conviction of the accused/A1 and A2 from 7 years to 5 years for offence under Section 392 IPC and confirmed the conviction for offence under Section 452 IPC and the maximum sentence imposed against the petitioner/A1 is 5 years, against which, the petitioner/A1 filed Crl.R.C.No.687 of 2023 before this Court along with suspension of sentence petition.

3.During trial, on the side of the prosecution, PW1 to PW10 examined and marked Exs.P1 to P10. 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 modified by the Appellate Court.

4.The contention of the learned counsel for petitioner is that PW1



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Manjula/Victim's statement is that on 11.03.2015, when she was alone at her home at about 4.20 p.m., the petitioner along with other accused entered the house and asked for water to drink. When she was about to bring the water, the petitioner pulled her from the back and placed knife on her neck and further snatched the chain. The victims fearing for life removed the ear studs and ring and thereafter the accused/A1 and A2 fled from the scene. The only witness against the petitioner is PW1 and the trial Court convicted the petitioner relying upon the recovery. PW1 admits that she identified the jewels in the police station. In view of the same, recovery becomes doubtful. The trial Court disbelieving the evidence of PW1 in part, acquitted the petitioner for offence under Section 397 IPC. The Sessions Court modified the condition. He further submitted that the evidence of PW1 is highly doubtful. In this case no identification parade conducted and the recovery is also doubtful. 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.

5.The learned Government Advocate (Crl. Side) on the other hand filed



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his counter and submitted that the case of the prosecution is on 11.03.2015 at about 04.20 P.M., when the defacto complainant/Manjula was in her house at Vedappan Kattuvalavu, Deevattipatty, the accused A1 and A2 trespassed into the house of Manjula which situated on the 1st floor and requested to provide water, thereby diverted her attention and committed robbery at Knife point by putting her to instant feat of death. In such course A1 caught hold of her hair and A2 raised a knife towards her and forced to give jewels causing intimidation and out of fear of death the complainant took two chains, one pair of ear studs and ring totally weighing 7 Sovereigns. A2 also searched the bureau and took away 1.25 Kg of silver ornament and a china made Cell Phone worth Rs.75,000/- and came out of the house and bolted the door out side and left the scene of occurrence. A2 used knife which was a deadly weapon. Hence the complaint.

5.1. Further submitted that based on the above, a case was registered in Deevattipatty Police Station, Salem District, Crime No. 161 of 2015, under Section 392 r/w 397 IPC against the accused on 11.03.2015 at about 19.00 hours by Tr.Periyasamy, the then Sub Inspector of Police. The Investigation was taken by Tr.Kandasamy, the then Inspector of Police, Deevattipatty Police Station. During the course of investigation, the then Inspector of Police



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went to the scene of occurrence and drew rough sketch and prepared observation mahazar in the presence of witnesses and also examined the witnesses and recorded their respective statements and also collected documents from the concerned authorities. On 11.03.2015, the then Inspector of Police arrested the accused/A1 and A2 and recorded their confessions statements in the presence of witnesses, then, sent them to judicial custody.

5.2. Further submitted that after completion of elaborate and detailed investigation, based on the witnesses statement, the then Inspector of Police altered the offences from Section 392 r/w 397 IPC @ Section 450, 392, r/w 397 IPC and filed charge sheet against accused before the Learned Judicial Magistrate Court, Omalur and the same was taken on file and assigned P.R.C.No.20 of 2016 and the case was committed before the Assistant Sessions Judge, Omalur, Salem District and the same was taken on file and assigned S.C. No. 34 of 2017. In order to prove the case of the prosecution, the prosecution has examined 10 witnesses and marked 10 exhibits and no material object marked. On the defence side no witness examined and no exhibits and no materials marked.



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5.3. Further submitted that after conducting full-fledged trial, the trial court by its judgment dated 22.04.2022 in S.C.No.34 of 2017 convicted the Petitioner/accused. Further submitted that the prosecution proved the case beyond all reasonable doubts. Both the Trial Court and Lower Appellate Court have accepted the prosecution case and imposed punishment on the petitioners/appellant/accused. There is no valid point available for the petitioner to argue the matter. There is no perversity, illegality and impropriety of the concurrent findings of the courts below. 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 the entire case vest on PW1. In this case, Ex.P9 is photograph of gold jewels. The evidence of PW1 is that she identifies the jewels in the police station. In view of the same, this Court finds that the finding of the Courts below needs to be reconsidered. Further, considering the period of incarceration, this Court is inclined to suspend the sentence imposed on the petitioner.

7.Accordingly, the relief of suspension of sentence and bail are granted



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on the following conditions till the disposal of the above Criminal revision:

(a) The petitioner/A1 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) each, with two sureties, each for a like sum to the satisfaction of the learned Assistant Sessions Judge, Omalur, Salem.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Judge 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 calender 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.

8. Accordingly, this Criminal Miscellaneous Petition is ordered.



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To

- 1.The Inspector of Police,
Deevattipatti Police Station,
Salem District.
- 2.The I Additional District and Sessions Judge,
Salem.
- 3.The Assistant Sessions Judge,
Omalur, Salem.
- 4.The Superintendent,
Central Prison,
Coimbatore.
- 5.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

rsi

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