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Crl.M.P.No.2800 of 2024 in Crl.R.C.No.292 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.2800 of 2024
in Crl.R.C.No.292 of 2024

Prakash

... Petitioner

Vs.

State rep.by
The Station House Officer,
Kadampuliyur Police,
Cuddalore District.
Crime No.409/2022.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) the Code of Criminal Procedure, to suspend the sentence and grant bail to the petitioner in judgment passed in C.A.No.45 of 2023 dated 19.12.2023 on the file of the I Additional District and Sessions Judge, Cuddalore by confirming the order passed in C.C.No.173 of 2022 dated 10.05.2023 on the file of the Judicial Magistrate No.II at Panruti.

For Petitioner : Mr.K.Gandhi Kumar

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor

ORDER

The petitioner was convicted by the learned Judicial Magistrate No.II, Panruti (trial Court) in C.C.No.173 of 2022 *vide* judgment, dated 10.05.2023



and sentenced to undergo Rigorous Imprisonment for a period of three years and to pay a fine of Rs.2,000/-, in default to undergo Simple Imprisonment for one month for offence under Section 392 of IPC. Challenging the same, the preferred an appeal before the learned I Additional District and Sessions Judge, Cuddalore in Crl.A.No.45 of 2023 (lower appellate Court) and the same was dismissed *vide* judgment, dated 19.12.2023. Challenging the same, the present criminal revision case and the suspension of sentence.

2.The learned counsel for the petitioner submitted that PW1 was grazing goats in Maya Garden belonging to one Ravi and the same was questioned by the petitioner, who is the friend of said Ravi. Due to which, there was wordy altercation and the petitioner is said to have abused PW1, for which, a false case has been lodged. He further submitted that the occurrence is said to have taken place on 28.07.2022, but the complaint (Ex.P1) lodged and the FIR (Ex.P5) reached the Court only on 30.07.2022 after the arrest of the petitioner. PW1 stated that the complaint was by handwritten given to PW7 which was typed and marked as Ex.P1. There is nothing to show that the complaint was read over to PW1 after typing and thereafter, finding it to be true, she signed in the complaint (Ex.P1). PW7's evidence is he only received



a typed complaint (Ex.P1). Hence, the initiation of the case itself becomes doubtful. In this case, the petitioner was shown arrest on 30.07.2022 at about 02.00 p.m., during the routine vehicle check. Since the petitioner's gave contradictory answers during that time, he was searched and MO1 seized from him in presence of PW6 and PW8. PW1 in her evidence admits that she and her husband was informed about the arrest of the accused at about 08.00 a.m., on 30.07.2022. In this case, the petitioner is from the next village and no details given with regard to identify of the accused person. Added to it, no test identification parade conducted. The trial Court as well as the lower appellate Court failed to consider these contradictions. He further submitted that the petitioner completed Diploma in Electronic and Electrical Engineering securing good marks. Due to the above case, he is unable to get any employment. Now the petitioner is confined in the Central Prison, Cuddalore.

3.The learned Additional Public Prosecutor filed his counter and submitted that on 28.07.2022 at about 2.30 p.m., the defacto complainant was grazing the goats for her livelihood at Ravi's Jackfruit grove in Kadampuliyur Maya Garden, at that time, an unidentified young man aged a bout 25 years came in a two wheeler bearing registration No.TN-31-CU-1779 and asked her



the phone number of coconut grove owner. She replied him that she did not know the phone number and thereafter, she was lying near the motor shed. At that time, the said unidentified person came behind her and committed robbery of her thali chain, in which, half of the thali chain was taken by the unidentified man and the remaining vest with the defacto complainant. Further, he also took her Samsung Mobile phone and fled through the cashew grove. She immediately informed her husband and complaint was lodged. Based on the complaint lodged by the defacto complainant, a case was registered in Crime No.409 of 2022 for the offence under Section 392 IPC. PW9 took up the investigation, visited the scene of occurrence, prepared observation mahazar/Ex.P2 and rough sketch/Ex.P6, examined the witnesses, recorded their statements and prepared alteration report/Ex.P7. PW10 took up further investigation, examined the witnesses, arrested the accused and recorded his confession statement. Based on the confession statement, MO1 to MO6 recovered from the accused under seizure mahazar/Ex.P4 in the presence of witnesses and submitted the case properties to the Court under Form 91/Ex.P8. On completion of investigation, charge sheet filed. Before the Trial Court, on the side of the prosecution PW1 to PW10 examined, Ex.P1 to Ex.P8 and MO1 to MO6 marked. On the side of the defence, no witness



examined and no documents marked. On conclusion of trial, the Trial Court convicted the petitioner as stated above. Hence, he prays for dismissal.

4.Considering the submissions and on perusal of the materials, it is seen that there is discrepancy in the manner and mode of lodging the complaint. The recovery of material objects is doubtful. Added to it, no test identification parade conducted to prove identity of the petitioner, who committed the offence of robbery. It is to be noted that no other case is pending against the petitioner except the above one. The petitioner has completed his Diploma education, searching for job and a first person in his family who acquired education to this level.

5.Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the revision and he 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.

6.Further, the petitioner shall appear before the Trial Court on the first



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working day of once in three month at 10.30 a.m. until the disposal of the criminal 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.

7. Accordingly, this Miscellaneous Petition is ordered.

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Index: Yes/No

Internet: Yes

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Note: Issue order copy on 19.03.2024



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To

- 1.The I Additional District and Sessions Judge,
Cuddalore.
- 2.The Judicial Magistrate No.II,
Panruti.
- 3.The Station House Officer,
Kadampuliyur Police,
Cuddalore District.
- 4.The Central Prison,
Cuddalore.
- 5.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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