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*CrI.M.P.No.3490 of 2024
in CrI.R.C.No.383 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2024

CORAM:

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

CrI.M.P.No.3490 of 2024
in
CrI.R.C.No.383 of 2024

Rajaguru

... Petitioner/Revision Petitioner

Vs.

The State Represented by,
The Inspector of Police,
B-3, Variety Hall Road Police Station,
Coimbatore, Tamil nadu – 641 001.

... Respondent/Respondent

Prayer: Criminal Miscellaneous Petitions filed under Section 397(1) of Criminal Procedure Code to suspend the sentence of the conviction for 1 year in the order in C.C.No.398 of 2016 dated 19.04.2023 passed by the learned Judicial Magistrate No.V, Coimbatore.

For Petitioner : Mr.N.Ganesh

For Respondent : Mr.A.Damodaran



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence of conviction for one year in the order in C.C.No.398 of 2016 dated 19.04.2024 by the learned Judicial Magistrate No.V, Coimbatore till the disposal of above Criminal Revision.

2. The petitioner was convicted by the trial Court in C.C.No.398 of 2016 on 19.04.2023 for the offence under Section 153-A IPC and sentenced to undergo one year Simple Imprisonment and pay a fine of Rs.1,000/- and in default of payment of fine to undergo imprisonment for one month. Aggrieved against the same, the petitioner preferred an appeal in CrI.A.No.134 of 2023. The learned I Additional District and Session Judge, Coimbatore by the judgment dated 05.12.2023 dismissed the appeal and confirmed the conviction and sentence of the trial Court. Aggrieved by the same, present revision is filed.

3. The case against the petitioner is that on 30.05.2015, the petitioner addressed a public meeting organized by the Sivasena party and at that time the petitioner made speech disturbing the communal harmony and



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peace provoking the minority community. He also further abused the minority community on their food culture and habits. Hence, the case was registered on 02.06.2024 for the offence under Section 153-A of IPC.

4. During trial, PW1 to PW11 examined and Exs.P1 to P6 marked. The trial Court on the evidence and records, convicted the petitioner for offence under Section 153-A IPC and sentenced to undergo one year Simple Imprisonment and pay a fine of Rs.1,000/- and in default of payment of fine to undergo imprisonment for one month. The lower appellate Court, independently considered the case, dismissed the appeal, confirming the conviction of the trial Court.

5. The learned counsel for the petitioner and the learned Additional Public Prosecutor submitted that the petitioner surrendered before the learned Judicial Magistrate No.V, Coimbatore and he had been remanded in the Central Prison, Coimbatore.

6. The contention of the petitioner is that the petitioner falsely implicated in this case. The petitioner addressed a meeting and he has the right of speech, which is a fundamental right, granted under Article 19(1)(a)



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of the Constitution. There was no complaints by the public after the speech of the petitioner and there was no disharmony or violence. In such circumstances, it cannot be presumed by the respondent police on their own that the speech of the petitioner might create disharmony between two communities. PW8 stenographer who is said to have taken down the speech and submitted a report Ex.P3. It is seen that it is with exaggeration, not corroborated with any statement of witnesses who were said to be present in the meeting. The sanction Ex.P4 in this case is issued without application of mind and without proper consideration of the materials, both the trial Court and the appellate Court failed to consider the case in holistic view. Further in this case none of the independent witnesses PW1 to PW5 not supported the prosecution case, the evidence of PW6, PW7 and PW9 are contradicting the statement of PW8 in report Ex.P3. Hence, the conviction is not sustainable.

7. The learned Additional Public Prosecutor would submit that the petitioner is not disputing, addressing the public meeting and in the public meeting he had spoken ill about the minority community regarding their food habits, conduct and culture. The stenographer, PW8, who attended the meeting taken down the speech and submitted a report Ex.P3.

The police constables PW6, PW7 and Sub-Inspector PW9 who were in the



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bandobast duty in the public meeting examined confirmed the report of the stenographer, thereafter only charge sheet filed. During trial, witnesses examined and the trial Court on the report and the evidence of the witnesses had rightly convicted the petitioner. The lower appellate Court confirmed the conviction. If the petitioner is granted suspension of sentence he would continue to commit such offence which would only disturb the public peace, harmony and create law and order problem and strongly opposed the suspension of sentence.

8. Considering the submissions made and on perusal of the materials, it is seen that PW6, PW7 and PW9 are the police constables and Sub-Inspector, who were in the bandobast duty and PW8 is the stenographer who had attended the meeting took notes, submitted report Ex.P3. All witnesses belong to the police department, apart from these witnesses none of the public supported the case of the prosecution. It is seen the evidence of PW6, PW7 and PW9 and PW8 and his report Ex.P3 are contradicting to each other, Ex.P4 sanction for prosecution contradicting to the report. PW9 admits presence of PW11 Inspector. But PW11 denies his presence. Further PW11 is the informant and investigating officer, which is not proper. In this case Ex.P4 sanction for prosecution filed by PW10 Investigating Officer, not



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by the person who arrived at subjective satisfaction and issued the same.

Hence, the sanction for prosecution not proved in the manner known to law.

Further, subsequent to the meeting no report of any disturbance to the communal harmony or peace. In view of the same, this Court find that the conviction of the petitioner requires reconsideration.

9. 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 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 No.V, Coimbatore.

(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 on the first working day of every English Calendar once in three months at 10.30 a.m., until



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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.

10. Accordingly, this Criminal Miscellaneous Petition is ordered.

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Index : Yes/No

Internet : Yes/No

Speaking order/Non speaking order

Neutral citation : Yes/No

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Note: Issue order copy on 30.08.2024



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To

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- 1.The I Additional District Judge,
Coimbatore.
- 2.The Judicial Magistrate No.V,
Coimbatore.
- 3.The Superintendent,
Central Prison, Coimbatore.
- 4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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