



Crl.M.P.No.4120 of 2024 in Crl.R.C.No.424 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.4120 of 2024

in

Crl.R.C.No.424 of 2024

Saravanan

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Kadathur Police Station.
Crime No.171/2018.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 397(1) the Code of Criminal Procedure, to suspend the sentence of imprisonment imposed on the petitioner imposed by the Trial Court in judgment dated 27.12.2022 made in C.C.No.115 of 2018 on the file of the learned Judicial Magistrate No.2, Gobichettipalayam, Erode District and confirmed in the judgment dated 09.11.2023 made in Crl.A.No.76 of 2023 on the file of the learned III Additional District and Sessions Judge, Erode at Gobichettipalayam and release the petitioner on bail pending disposal of the above revision petition.

For Petitioner : Mr.R.Prabakar

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



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ORDER

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The petitioner was convicted by the learned Judicial Magistrate No.2, Gobichettipalayam (trial Court) in C.C.No.115 of 2018 *vide* judgment, dated 27.12.2022 and sentenced the petitioner to undergo three months simple imprisonment for the offence under Section 279 IPC and to undergo one year simple imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo two weeks simple imprisonment for the offence under Section 304A IPC. Against which, the petitioner preferred an appeal before the III Additional District and Sessions Court, Erode at Gobichettipalayam in Crl.A.No.76 of 2023 (lower appellate Court) and the same was dismissed *vide* judgment, dated 09.11.2023. Challenging the same, the present criminal revision case and the suspension of sentence.

2.Now, the petitioner surrendered before the learned Judicial Magistrate No.II, Gobichettipalayam and presently he is confined in Central Prison, Coimbatore.

3.The contention of the learned counsel for the petitioner is that in this



case except for PW5, no other witnesses stated about the accident proper. It is the case where the deceased was riding bicycle near Pudhuvallampalyam Pirivu on Sathy to Gobi Main Road from west to east and the petitioner, who is a driver of a bus, dashed him from behind. He would submit that the evidence of PW5 is that the deceased, aged about 70 years, loaded green fodders for the sheep in his bicycle and due to the accident, the deceased was thrown away and sustained head injury. The other witness, PW8 states that the bus came in contact with the fodder which was extended in the back of the bicycle. PW5 states that the accident took place at 2.30 p.m., but the evidence of PW8 is that it was between 4.00 pm and 5.00 pm. Hence, the presence of PW8 is doubtful. Further, the evidence of PW 5 is contrary to the medical evidence, he admits that though he was present in the scene of occurrence and knew the accused, who also hails from the same Village, he had not accompanied him to the hospital. PW1 to PW4 are the sons and daughters of the deceased, who all admit they came to the scene of occurrence only after the accident. PW7, PW9 and PW10, who are the witnesses for the observation mahazar and rough sketch, not supported the case of the prosecution. He further submitted that the Motor Vehicle report/Ex.P9 confirms that there is no damage or any marks in the bus. He



would further submit that in this case, the Motor Vehicle Inspector, Casualty Doctor and Postmortem Doctor not examined and no reason was given for non-examination and all the documents marked through Investigating Officer which is inadmissible. He further submitted that the Trial Court on its own given an explanation that these documents were received under Section 294(3) Cr.P.C. but there is no reference in the evidence. The Sessions Court failed to independently consider the evidence and materials and dismissed the appeal confirming the conviction.

4.The learned Additional Public Prosecutor submits that PW1, who is the son of the deceased, on getting information about the accident, rushed to the hospital where the Doctor pronounced him dead. PW2 and PW3 are the daughters and PW4 is the another son of the deceased. PW5, PW7, PW8 and PW9 are the eye witnesses. PW6 and PW10 are the witnesses to the observation mahazar though they have not supported the case of the prosecution. PW11 is the Sub-Inspector of Police who received the complaint, visited the scene of occurrence, prepared observation mahazar and rough sketch, examined the witnesses and on the death of the injured, PW12 took up investigation, examined the Doctor, sent the vehicle for



inspector, collected documents and filed charge sheet in this case. During the trial, on the side of the prosecution PW1 to PW12 examined and Ex.P1 to Ex.P11 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 which was confirmed by the Sessions Court. Hence, he prays for dismissal.

5.Considering the submissions and on perusal of the materials, it is seen that PW1 to PW4 are the sons and daughters of the deceased and they are not eye witnesses. Except for PW5, the other projected eye witnesses PW7, PW8 and PW9 not stated anything about the accident. The evidence of PW5 and PW8 are contradictory to each other with regard to the time and manner in which the accident took place. The Motor Vehicle inspection report confirms that there is no damage or any marks in the vehicle driven by the petitioner. The petitioner's explanation that the deceased slipped from the bicycle, fell down, sustained injuries and there was no impact of the bus with the bicycle not considered by the Courts below. Added to it, the bicycle driven by the deceased not produced. It is seen that the fodder loaded in the bicycle were extended and protruded. Hence, this Court grants suspension



of sentence.

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6. 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.

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

8. Accordingly, this Miscellaneous Petition is ordered.

21.03.2024



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Index: Yes/No

cse

Note: Issue order copy on 22.03.2024

To

- 1.The Judicial Magistrate No.2,
Gobichettipalayam,
Erode District.
- 2.The III Additional District and Sessions Judge,
Erode at Gobichettipalayam.
- 3.The Inspector of Police,
Kadathur Police Station.
- 4.The Superintendent,
Central Prison,
Coimbatore.
- 5.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

cse

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