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Crl.M.P.No.5227 of 2024 in Crl.R.C.No.563 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.03.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.5227 of 2024
in Crl.R.C.No.563 of 2024

D.Selvam,
S/o.Durai

... Petitioner

Vs.

State rep by
Inspector of Police,
K-10, Koyambedu Traffic Investigation,
Chennai.
Cr.No.195/KM2/2013.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) the Code of Criminal Procedure, to suspend the sentence in judgment dated 21.09.2023 in C.A.No.104/2021 on the file of the XVI Additional Sessions Court, Chennai confirming the judgment dt:-16.03.2021 in C.C.No.2250 of 2015 passed by the VI Metropolitan Magistrate, Egmore, Chennai and enlarge the petitioner on bail pending disposal of the criminal revision.

For Petitioner	:	Mr.R.P.Prathap Singh
For Respondent	:	Mr.S.Raja Kumar Additional Public Prosecutor

ORDER

The petitioner was convicted by the learned VI Metropolitan Magistrate, Egmore, Chennai (trial Court) in C.C.No.2250 of 2015 *vide* judgment, dated 16.03.2021. Challenging the same, the preferred an appeal before the learned



Additional District and Sessions Judge, Chennai in Crl.A.No.104 of 2021 (lower appellate Court) and the same was dismissed *vide* judgment, dated 21.09.2023. Challenging the same, the present criminal revision case and the suspension of sentence.

2.The conviction and sentence of the trial Court rendered against the petitioner/A1 and A2 are as follows:

- For offence under Section 304(A) IPC, the petitioner/A1 was convicted and sentenced to undergo six months Simple Imprisonment.
- For offence under Section 3 r/w 181 of the Motor Vehicle Act, the petitioner/A1 was convicted and sentenced to undergo three months Simple Imprisonment.
- For offence under Section 5 r/w 180 of the Motor Vehicle act, A2 was convicted and ordered to pay Rs.500/-, in default, to undergo one week Simple Imprisonment.

3.The gist of the case is that on 26.09.2013 at about 11.30 a.m., the petitioner had driven the lorry bearing Reg.No.TN-09-F-4579 from west to east direction near Poonamallee Highroad, MGR University signal and hit the back side of the two wheeler bearing Reg.No.TN-18-V-3901 which was waiting for signal. The said two wheeler was driven by the defacto complainant/PW1 and Pillion rider is his friend Dhatchanamoorthy (deceased).



Due to the accident, the defacto complainant/PW1 fell down left side of the road and the deceased fell down right side of the road. The deceased caught hold on back side of the lorry wheel and dragged for ten meters. Then the lorry was stopped and injured was immediately taken to Sridevi Hospital where he pronounced dead at 01.10 p.m. On the complaint (Ex.P1), FIR (Ex.P5) in Crime No.195/KM2/2013 registered for offence under Sections 279 & 304(A) IPC registered. Then the investigation officer visited the scene of occurrence, prepared Observation Mahazar (Ex.P7), Rough Sketch (Ex.P8) in presence of witnesses, recorded statements of witnesses present in the scene of occurrence and conducted inquest. Then the accused was arrested, body sent for postmortem and two wheeler and lorry sent to the Motor Vehicle Inspector for inspection. On collection of Motor Vehicle Inspector reports (Exs.P15 & P16) and postmortem report (Ex.P4), charge sheet filed before the trial Court. During trial, on the side of the prosecution, eight witnesses examined as PW1 to PW8 and sixteen documents marked as Exs.P1 to P16. On the side of the defence, no witness examined and no document marked. After full-fledged trial, the trial Court convicted the petitioner/A1 and A2 as stated above.

4.The contention of the petitioner is that in this case, PW1 to PW3 are



eye witnesses to the occurrence, PW4 and PW5 are witnesses for Observation Mahazar (Ex.P7) and Rough Sketch (Ex.P8), PW6 is the Doctor who conducted postmortem on the body of the deceased, PW7 is the Traffic Constable who said to have reached the spot, stopped bank vehicle, sent the injured to Sridevi Hospital. PW8 is the Investigating Officer. PW7 stated that he saw the lorry parked on the side of the road but PW1's evidence is that ambulance was called and injured was taken to Sridevi Hospital. Both PW1 and PW7 not identified the petitioner is the Driver of the lorry which caused accident. Other than PW1 and PW7, there is no other witness to speak about the accident. The trial Court relying on cross examination of the witnesses concludes the petitioner is the Driver of the lorry, which is not proper. He further submitted that in this case, the trial Court came to the conclusion that the lorry was not driven in rash and negligent manner. Since the petitioner was not having valid license, he was convicted for causing death for negligence under Section 304(A) IPC. The lower appellate Court without independently considering the evidence and materials, dismissed the appeal. Hence, he prays for suspension of sentence and bail.

5.The learned Additional Public Prosecutor appearing for the respondent



Police submitted that on 26.09.2013 near the MGR University signal Poonamallee Highroad, the defacto complainant/PW1 and his friend Dhatchanamoorthy/deceased were travelling in the two wheeler bearing Reg.No.TN-18-V-3901 and they were waiting for signal. At that time, the petitioner driving a sand loaded lorry bearing Reg.No.TN-09-F-4579 came in a rash and negligent manner, hit the two wheeler of the defacto complainant/PW1. Due to which, PW1 fell to the left side of the vehicle, luckily survived. The pillion rider Dhatchanamoorthy/deceased fell to the right side, caught under the wheels of the lorry and he was dragged for ten meters. Due to which, the deceased sustained injuries, blood was oozing from ears and he was immediately taken to Sridevi Hospital where he was pronounced dead at 01.10 p.m. The accident was informed by PW7, the Traffic Constable posted near the signal. The Traffic Investigation Police immediately came to the hospital, received the complaint (Ex.P1) of PW1 and registered FIR (Ex.P5). On getting information about the death of pillion rider, the offence under Section 304(A) IPC included and sent two wheeler and lorry to the Motor Vehicle Inspector for inspection, statements of witnesses recorded, observation mahazar (Ex.P7) and rough sketch (Ex.P8) prepared, inquest conducted, body sent for postmortem. The postmortem report (Ex.P4)



confirms that the death was due to the road accident and injuries sustained.

On completion of investigation, charge sheet filed before the trial Court.

During trial, on the side of the prosecution, eight witnesses examined as PW1 to PW8 and sixteen documents marked as Exs.P1 to P16. PW1 is the defacto complainant and driver of the two wheeler, PW2 & PW3 are eye witnesses present in the scene of occurrence, PW4 & PW5 are witnesses for Observation Mahazar (Ex.P7), PW6 is the Postmortem Doctor, PW7 is the Traffic Constable who was present near the traffic signal and PW8 is the Investigating Officer. The trial Court from the evidence of PW1 and PW7 confirmed that the accident took place at the relevant point of time and the petitioner is the driver of the lorry who had driven the lorry in a rash and negligent manner and caused the accident and convicted the petitioner. The lower appellate Court on independent assessment of evidence and materials confirmed the judgment of the trial Court. Hence, he prays for dismissal of suspension of sentence.

6.Considering the submissions and on perusal of the materials, it is seen that in this case, only two witnesses speak about occurrence are PW1 and PW7. PW1 is the rider of the two wheeler and PW7 is the Traffic Constable who was posted near the signal point. Both the witnesses though stated about



the accident, they failed to identify the petitioner is the Driver of the lorry and caused the accident. PW1 is categorical that he has not seen the Driver of the lorry and PW7's evidence is that he cannot identify the Driver of the lorry, hence, there are no witness to confirm that the petition was the Driver of the lorry and caused the accident. Added to it, the finding of the trial Court is that there was no rash and negligence. Since the Driver of the lorry had no valid driving license, it cannot be construed as rashness and negligence and convicting the petitioner needs reconsideration.

7. 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.

8. 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



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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.

9. Accordingly, this Miscellaneous Petition is ordered.

25.03.2024
(¹/₂)

Index: Yes/No

Internet: Yes

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To

1. The XVI Additional District and Sessions Judge,
Chennai.

2. The VI Metropolitan Magistrate,
Egmore, Chennai.

3. The Inspector of Police,
K-10, Koyambedu Traffic Investigation,
Chennai.

4. The Central Prison,
Puzhal, Chennai.

5. The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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