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Crl.MP.No.3551 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.03.2024

CORAM:

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

Crl.M.P.No.3551 of 2024

in

Crl.A.No.251 of 2024

Sugumar

... Petitioner/Accused

Vs.

1. State represented by
The Deputy Superintendent of Police,
Kottakuppam Sub-Division.

2.Manimaran

... Respondents

PRAYER: Criminal Miscellaneous Petition filed under Sections 389 of Cr.P.C to suspend the sentence imposed on the petitioner by order dated 30.01.2021 in Special S.C.No.65 of 2019 on the file of learned Special Judge, Special court for exclusive trial of cases registered under the Scheduled Castes and the Schedule Tribes (Prevention of Atrocities) Act, Villupuram, and to enlarge the petitioner on bail, pending disposal of the above Criminal Appeal.



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For Petitioner : Mr.C.P.Sivamohan

For Respondents : Mr.S.Raja Kumar
Additional Public Prosecutor
for first respondent
Ms.V.Poombavai
Legal Aid Counsel
for second respondent

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, to suspend the sentence imposed on the petitioner by order dated 30.01.2021 in Special S.C.No.65 of 2019 on the file of learned Special Judge, Special court for exclusive trial of cases registered under the Scheduled Castes and the Schedule Tribes (Prevention of Atrocities) Act, Villupuram, and to enlarge the petitioner on bail, pending disposal of the above Criminal Appeal.

2.The petitioner/Accused in Special S.C.No.65 of 2019 was convicted by the trial Court by judgment dated 30.01.2024 and sentenced to undergo simple imprisonment for one year under Section 323 of IPC, to undergo simple imprisonment for three months under Section 447 of IPC and to undergo simple imprisonment for one year and to pay a fine of Rs.10,000/-



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and in default thereof, to undergo simple imprisonment for three months under Section 3(2)(va) of SC/ST (POA) Amendment Act, 2015. Aggrieved over the same, the petitioner preferred an Appeal in Crl.A.No.251 of 2024 before this Court along with the instant miscellaneous petition seeking suspension of sentence and bail.

3. During trial, on the side of the prosecution, PW1 to PW17 examined and marked Exs.P1 to P26. On the side of the defence, neither examined nor marked. Material Object on behalf of the prosecution, M.O.1 and M.O.2 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.

4. The contention of the learned Counsel for petitioner is that the petitioner was tried along with four others except the petitioner, the other accused A2 to A5 acquitted by the trial court. When the trial court found evidence of PW1 and PW2 unreliable, acquitted A2 to A5, the same would apply to the petitioner A1 and he ought to have been acquitted. Further, submitted that the evidence of PW1 and PW2, projected eyewitness are



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contradictory to each other. Their medical report is not in conformity with the ocular evidence. PW1, PW2, PW3 and PW4 are closely related and it has been projected as though the petitioner had fisted and kicked PW1 in the private part. In this case, there is nothing to show that the petitioner had abused PW1 calling upon the caste name. Further submitted that the trial court had convicted the petitioner for the offence under Section 323 of IPC, 447 of IPC and under Section 3(2)(va) of SC/ST (POA) Amendment Act, 2015. When the evidence of prosecution witness becomes doubtful and unbelievable, the trial court ought not to have convicted the petitioner. Hence, he prays for granting suspension of sentence to the petitioner.

5. The learned Additional Public Prosecutor has filed a counter, which reads as follows:

2. It is submitted that the case of the prosecution is that on 06.02.2019, when the de-facto complainant namely Tr.Manimaran lodged a complainant before the respondent police stating that on 06.02.2019 between 2.00 P.M. to 10.00 P.M. he was deputed for the job in the Toll Plaza two persons who came in PY 01 CL 3009 Ford Ecosport had requested to send him without paying toll duty, he refused and asked him to pay the amount for which the appellant replied in filthy words and quarrelled with him, one Sundar asked



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him to remove the barrier and he removed the barrier and at caught hold of his shirt pulled his face outside and fisted him blood oozed table. They abused the de-facto complainant in filthy word and threatened to set him ablaze, Sugumar kicked him in the private part. He protected his private part with his hand and then he came to know the name of others to be Vignesh, Kamalraj, Ashok, Kamesh. They assaulted him with chair, they damaged the door, then he was admitted in the hospital.

3. It is submitted that based on the above complaint, a case was registered in Auroville Police Station, Villupuram, Crime No.78 of 2019, u/s.147, 294(b), 323, 447, 427, 506(2) 307, IPC 3(1)R 3(1)(s) 3(2) (va) SC/ST Act 1989 on 06.02.2019 at about 20:30 hours, against the accused by Tr.Ayyaparaju, the then Sub Inspector of Police, and submitted before Tr.Thirumal, the then Deputy Superintendent of Police, and he taken up the case for investigation.

5.It is submitted that after completion of elaborate and detailed investigation, the then Deputy Superintendent of Police filed a charge sheet against the accused before the Learned Sessions Judge/Special Court for Exclusive Trial of Cases registered under the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act 1989, Villupuram and the same was taken on filed and assigned Special S.C.No.65 of 2019, dated 23.09.2019.

It is submitted that the trial court framed charges against the accused. During trial, the prosecution has examined 17 witnesses and marked 26 exhibits and 2 materials object was marked. On defence side no witness, no exhibit, no material object were marked.



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7. PROSECUTION SIDE WITNESSES:-

P.W.1	Tr.Manimaran/de-facto complainant	Deposed that he spoke about the incident happed to him and lodged a complaint before the respondent police
P.W.2	Tr.Sundhar	Corroborated the evidence of P.W.1
P.W.3	Tr.Prathab	Corroborated the evidence of P.W.1
P.W.4	Tr.Veeramani	Corroborated the evidence of P.W.1
P.W.5	Tr.Sivan	He attested in the Observation and Seizure Mahazar Ex.P.2,3
P.W.6	Tr.Ashokkumar	He attested in the Observation and Seizure Mahazar Ex.P.4.6
P.W.7	Tr.Neppoliyan	He attested in the Confession statement of the accused Ex.P6
P.W.8	Tr.Bharathi	He attested in the Confession statement of the accused Ex.P6
P.W.9	Tr.Karthikeyan	He issued a Community certificate to the accused
P.W.10	Tr.Parameswari	She issued Community certificate to the de-facto complainant.
P.W.11	Dr.Singaravelu	He issued medical report to the de-facto complainant
P.W.12	Tr.Govindhan	He attested in the Observation and Seizure Mahazars Ex.P.10,11
P.W.13	Tr.Latcharam	He attested in the Observation and Seizure Mahazars Ex.P.12,13
P.W.14	Tr.Murugaiya	He handed over the FIR copy to the concern officials
P.W.15	Tr.V.V.Thirumal	Deposed that after registering the case, as per the proceedings of the Superintendent of Police [Ex.P.10] he took up the case for further investigation. He went to the scene of occurence and drew rough sketch and prepared of witness. Thereafter he prepared a special report and sent to the concerned court.
P.W.16	Tr.Ayyapparaj	He received a complaint and registered a FIR and the same was submitted before the then Deputy Superintendent of Police.
P.W.17	Tr.M.V.Ajaythangam	He took up the case for further Investigation and examined the witness and recorded their statement. After completion of Investigation he laid a charge



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<i>P.W.1</i>	<i>Tr.Manimaran/de-facto complainant</i>	<i>Deposed that he spoke about the incident happed to him and lodged a complaint before the respondent police</i>
		<i>sheet before the concern court in accordance with law.</i>

9. It is submitted that after conclusion of due trial, the trial court by its judgment in Spl.S.C.No.65 of 2019 dated 30.01.2024 and acquitted the accused A2 to A5 and convicted the accused A1 in the following offences:-

<i>Accused</i>	<i>Under Section</i>	<i>Sentences</i>
<i>A-1</i>	<i>u/s.323 IPC</i>	<i>Sentenced to undergo 1 year Simple Imprisonment</i>
<i>A-1</i>	<i>u/s.447 IPC</i>	<i>Sentenced to undergo 3 months Simple Imprisonment.</i>
<i>A-1</i>	<i>u/s 3(2)(va) of SC/CT act</i>	<i>Sentenced to undergo 1 year Simple Imprisonment and fine Rs.10,000/- i/d to under 3 months S.I</i>

6. Learned counsel for the second respondent defacto complainant submits that in this case, there are four witnesses PW1 to PW4. PW1 was assaulted, kicked and beaten, which was witnessed by PW2 to PW4. The medical record, Ex.P9 confirms injuries sustained by the PW1. Further, the victim was assaulted by the petitioner for the reason he hails from schedule caste community and was beaten black and blue. On the arrest of the accused, the accused had confessed and admitted the involvement in the



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case. The contention of the petitioner that it was only a fight in the toll booth between the petitioner and the second respondent is not correct. The trial court though convicted the petitioner had passed a lesser sentence for the act of the petitioner, which is grievous in nature.

7. Considering the submissions made and on perusal of the materials available on record, it is seen that there is discrepancy between the evidence of PW1 to PW4 and medical evidence and taking note of the fact that there are arguable points involved in this Appeal and it would take some time for the appeal to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioner.

8. Accordingly, the reliefs of suspension of sentence, exemption from surrendering and bail are granted on the following conditions till the disposal of the above Criminal Appeal:

(a) The petitioner 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



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satisfaction of the learned Sessions Judge, Special Court for Exclusive trial of cases registered under SC/ST (POA), Act, Villupuram.

(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 once in three months at 10.30 a.m. on the first working day of the month, 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.

9. Accordingly, this Criminal Miscellaneous Petition is ordered.

10. This court appreciates Ms.V.Poombavai, legal aid counsel for assisting the court.

25.03.2024

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M. NIRMAL KUMAR, J.

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To

1. The Deputy Superintendent of Police,
Kottakuppam Sub-Division.
2. The Special Judge, Special court for exclusive
trial of cases registered under the Scheduled Castes
and the Schedule Tribes
(Prevention of Atrocities) Act, Villupuram,
3. The Public Prosecutor,
High Court, Madras.

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