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Crl.M.P.No.5015 of 2024 in Crl.R.C.No.541 of 2024

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M.NIRMAL KUMAR, J.

The petitioner was convicted by the learned VI Metropolitan Magistrate, Egmore, Chennai (trial Court) in C.C.No.9272 of 2021 *vide* judgment, dated 03.11.2023 and sentenced to undergo six months Simple Imprisonment for offence under Section 304(A) of IPC. Aggrieved over the same, an appeal was filed by the petitioner before the learned XXI Additional Sessions Judge, City Civil Court, Chennai (lower appellate Court) in Crl.A.No.748 of 2023 and the same dismissed by judgment, dated 04.03.2024 confirming the judgment of the trial Court. Challenging the same, the present criminal revision case and the suspension of sentence.

2.The case of the prosecution is that on 28.09.2021 at about 03.50 p.m., the petitioner was driving his two wheeler *viz.*, Royal Enfield bearing Reg.No.TN-12-Y-2361 in a rash and negligent manner near Balaji Hospital, Nolambur bypass road and dashed against the bicycle proceeding on the left side of the road on the same direction. The deceased boy Hariharan who fell down from the bicycle, sustained injury on his head, face and chest. Immediately, the deceased boy was taken to Balaji Hospital for first aid and



thereafter, he was taken to Apollo Hospital for further treatment. On the way, the deceased passed away. On information, the respondent Police registered an FIR in Crime No.188/TM/2021 for offence under Sections 279, 304(A) & 337 of IPC, examined the witnesses present in the scene of occurrence, prepared Observation Mahazar (Ex.P4), Rough Sketch (Ex.P3), conducted inquest on the body of the deceased, sent the body for postmortem and sent the vehicle of the petitioner for motor vehicle inspection. On receipt of postmortem report (Ex.P7) and motor vehicle inspection report (Ex.P11), the respondent Police filed charge sheet before the trial Court. During trial, on the side of the prosecution four witnesses examined as PW1 to PW4 and eleven documents marked as Exs.P1 to P11. On the side of the defence, no witness examined and no document marked. On conclusion of trial, the trial Court convicted the petitioner as stated above.

3.The learned counsel for the petitioner submitted that in this case, PW1 and PW2 are projected as eye witnesses for the occurrence, but their evidence highly doubtful and contradictory to each other. PW1 not identified the petitioner as the rider of two wheeler who caused the accident. Added to it, PW2 gives total different version contrary to the evidence of PW1. The learned counsel further submitted that the petitioner applied sudden brake,



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fell down, sustained injuries to avoid the accident which is confirmed from the Accident Register (Ex.P6). It was the deceased boy whose bag got stuck on the wheel of bicycle, due to which, got trapped and fell down. PW4 confirmed about this happening, but no investigation conducted in this regard. The bicycle involved in the accident not produced which shows that due to the school bag stuck to the bicycle wheels the deceased fell down and sustained injuries. The trial Court as well as the lower appellate Court failed to consider these aspects. Even from the evidence of witnesses, it is not proved, the accident was due to rash and negligence of the petitioner. It is not in dispute that the road is only 5 feet in width and it is crowded always. In such circumstances, question of riding two wheeler in high speed is not possible. In this case, FIR registered not on the statements of PW1 and PW2, but it was on the statement of PW3 the father of the deceased who admittedly not present in the scene of occurrence. Since PW3 was working as Sub Inspector of Police attached to the nearby Police Station, the case has been registered against the petitioner.

4.He further submitted that the petitioner completed MBA in PSG College of Technology, Coimbatore and he is presently working as Assistant Manager in Finance Department of a software company. For no fault, the



petitioner has got into the case and is facing conviction. Without prejudice to his contention on merits, the petitioner has come forward to give Rs.5,00,000/- by way of demand draft in No.630435 drawn on Canara Bank to Nithyanandham (PW3), the father of the deceased. Mr.Lakshmanan, Sub Inspector of Police attached to the respondent Police received the demand draft and undertook to handover the same to the deceased father (PW3). Hence, he prays for suspension of sentence.

5.The learned Additional Public Prosecutor appearing for the respondent Police submitted that on 28.09.2021, the petitioner drove the two wheeler viz., Royal Enfield bearing Reg.No.TN-12-Y-2361 in a rash and negligent manner near Balaji Hospital, Nolambur bypass road and dashed the bicycle proceeding on the left side of the road on the same direction. The deceased who is a school going boy, fell down from the bicycle and sustained grievous injuries. PW3 the father of the deceased lodged a complaint (Ex.P1) to the respondent Police and FIR (Ex.P2) registered. PW1 and PW2 are eye witnesses to the occurrence and PW4 is the Investigating Officer. PW1 and PW2 state about the two wheeler rider coming in a rash and negligent manner and causing the accident. The Postmortem Doctor confirmed that the death was due to injuries suffered in the accident. The prosecution to prove the



case examined PW1 to PW4 and marked Exs.P1 to P11. The trial Court as well as lower appellate Court considered the evidence of witnesses and rightly convicted the petitioner. He acknowledged on humanitarian consideration, the petitioner handed over demand draft for Rs.5,00,000/- to the father of the deceased.

6.Considering the submissions and on perusal of the materials, it is seen that in this case, PW1 and PW2 are projected as eye witnesses. PW1 admits that he is the friend of Hariharan's brother. It is not in dispute that the road was only five feet width and it was crowded. The petitioner sustained injury while applying sudden brake and fell down are recorded in Ex.P6. Strangely PW1 and PW2 does not state anything about the same. PW4 Investigating Officer admits school bag of the deceased getting entangled to the wheel of bicycle which can cause sudden fall of the bicycle to the road and the victim sustained injury is possible. In this case, the bicycle not produced as material object to confirm the impact and damage to bicycle and the accident as projected by the prosecution.

7.It is also seen that the evidences of PW1 and PW2 are contradictory. Admittedly, no other witnesses for Observation Mahazar (Ex.P4), Rough



Sketch (Ex.P3) produced. Neither the Motor Vehicle Inspector nor the Postmortem Doctor examined and all the documents marked through the Investigating Officer/PW4. Added to it, the complaint (Ex.P1) lodged with a delay of 11 hours. Admittedly, PW3, the father of the deceased is not an eye witness to the accident. Even the FIR reached the Court with a delay of 13 days. In this case, there is no evidence to prove that the accident was due to rash and negligence of the petitioner. In the absence of production of bicycle, the contributory aspect could not be ascertained. In view of the above, the judgment of conviction and sentence needs reconsideration.

8. Without prejudice to the contention on merits and on humanitarian consideration, the petitioner produced demand draft for Rs.5,00,000/- in No.630435 drawn on Canara Bank in the name of PW3, father of the deceased. The scanned reproduction of the demand draft is as follows:



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9. In view of the above, 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 likesum to the satisfaction of the trial Court.

10. Further, the petitioner shall appear before the trial Court on the first working day of once in six months at 10.30 a.m., till the disposal of the present criminal revision case and if he is not able to appear before the trial Court on that day, he shall make arrangement 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. Accordingly,



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this Miscellaneous Petition is ordered.

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