



CrI.M.P.No.5180 of 2023 in CrI.R.C.No.1714 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.M.P.No.5180 of 2023
in CrI.R.C.No.1714 of 2022

1.Vinoth
2.Gokulakrishnan

... Petitioners

Vs.

The State rep. by
The Inspector of Police,
Mayiladuthurai Police Station,
Mayiladuthurai.
Crime No.280/2014.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 397(1) the Code of Criminal Procedure, to suspend the sentence imposed on the petitioners in the judgment dated 27.07.2022 made in CrI.A.No.23 of 2021 on the file of the learned Additional Sessions Judge, Mayiladuthurai confirming the judgment dated 03.12.2021 made in S.C.No.112 of 2015 on the file of the Assistant Sessions Judge, Mayiladuthurai and to release the petitioners on bail pending disposal of the revision petition.

For Petitioners : Mr.M.Karunanidhi
for Mr.C.Prabakaran

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



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ORDER

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The petitioners were convicted by the learned Principal Assistant Sessions Judge, Mayiladuthurai (trial Court) in S.C.No.112 of 2015 *vide* judgment, dated 03.12.2021 and sentenced the first petitioner to undergo three years rigorous imprisonment for the offence under Section 332 IPC, to undergo seven years rigorous imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo six months simple imprisonment for the offence under Section 307 IPC and sentenced the second petitioner to undergo three years rigorous imprisonment for the offence under Section 332 IPC, to undergo seven years rigorous imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo six months simple imprisonment for the offence under Section 307 IPC and to undergo three years rigorous imprisonment for the offence under Section 506(ii) IPC. Against which, both the petitioners preferred an appeal before the Additional District and Sessions Court, Mayiladuthurai in Crl.A.No.23 of 2021 (lower appellate Court) and the same was dismissed *vide* judgment, dated 27.07.2022. Challenging the same, the present criminal revision case and the suspension of sentence.



2.The case against the petitioners is that on 02.04.2014 at about 8.30 p.m., when Moorthy, Grade I Constable attached to the respondent police went to Koorainadu, Vandipettai Pallivasal Street to regulate the traffic in his uniform found the first petitioner/A1 parked his motor bike in the middle of the road, sitting on it and the second petitioner/A2 standing beside him, they were talking to each other and causing disturbance to the traffic. PW1 requested both the accused to move away from the place not to cause obstruction to the traffic, at that time, A1 claimed that nobody dare to question him and there was some altercation, in which, A1 took a knife from his back, attempted to assault the said Moorthy on his head which he evaded and sustained injury on his left hand and left knee. PW1 also caught hold of A1, at that time, A2 took a knife from A1, attacked the said Moorthy on his forehead and shoulders. Hearing the shout of the said Moorthy, PW5/Sub-Inspector of Police and PW6/Head Constable who were on the other side of the road regulating traffic, came rushed to rescue PW1. On seeing PW5 and PW6, the accused persons ran away from the scene of occurrence leaving their bike. PW2/Constable attached to Organized Crime Intelligence Wing was asked by PW5 to take PW1 to the hospital. Thereafter, the injured PW1



was taken to Government Hospital where PW10/Doctor examined him, issued Accident Register and thereafter, information was sent to the Inspector of Police. PW11/Inspector of Police, who came there received the complaint from PW1 and registered FIR. The injured thereafter took treatment at Vairam Hospital wherein PW9/Doctor treated him as in-patient from 02.04.2014 to 07.04.2014. The Inspector of Police visited the scene of occurrence at about 11.30 p.m., prepared observation mahazar/Ex.P2 and rough sketch/Ex.P11 in the presence of PW3 and PW4, seized the motor bike/MO2 and recorded the statement of witnesses. Thereafter, on 06.04.2014 A2 was arrested in the presence of PW6 and PW7. On his confession, MO1/knife was seized. On the transfer of PW11, PW12 took up investigation and filed the charge sheet in this case. During the trial, on the side of the prosecution PW1 to PW12 examined, Ex.P1 to Ex.P13, MO1 and MO2 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.

3.The contention of the learned counsel for the petitioner is that a put-



up case has been registered against the petitioners. On 02.04.2014, since it was an election period the petitioners participated in the election rally of their political party. Earlier there have been some cases foisted against them, taking advantage of the same, during the election period the petitioners who are active in political work were shown arrest in this case. Admittedly, A1 was not arrested in this case. He would submit that the occurrence is said to have been taken place in a public place but no public was examined as witness. Admittedly, the place in which the occurrence took place is a crowded place wherein temple, coffee shop, primary health centre and a shopping complex were situated. Further, in the case the evidence of projected eye witnesses PW1, PW5 and PW6 are contradictory to each other. He would further submit that though conviction is made under Section 307 IPC, no x-ray or any medical record produced. In the Accident Register copy/Ex.P9 and wound certificate/Ex.P8, the injuries recorded are contradictory to each other. In Accident Register, laceration injuries are recorded, on the contrary in wound certificate, puncture wound has been recorded. Further, the Doctor admits that if PW1 is attacked with MO1, the injury would have been cut injury and no laceration injury. It is



further suggested that due to slip and fall, such laceration injuries is possible. Admittedly, in this case no charges were framed against A2 for the offence under Section 307 IPC, but the Trial Court as well as the Lower Appellate Court had given an explanation that invoking Section 461 Cr.P.C., conviction can be rendered under Section 307 IPC which is against the procedure and law. He further submitted that in this case, the witnesses for the arrest and recovery of MO1, namely, PW7 and PW8 not supported the case of the prosecution. Hence, the arrest and recovery becomes doubtful. Though there have been inherent flaws and defects in the case of the prosecution, the Trial Court as well as the Lower Appellate Court had not considered the evidence in right perspective, on the contrary had convicted the petitioners.

4.The learned Additional Public Prosecutor filed his counter and submitted that on 02.04.2014 at about 20.30 hours, when PW1/Moorthy, Grade I Constable went to evening patrol and traffic monitoring in his uniform, at that time, A1 parked his two wheeler bearing registration No.TN-47-W-2952 causing interference to the traffic and sat on the same



along with A2. When PW1 asked the accused to take his vehicle, there arose some altercation between them, in which, A1 and A2 attacked PW1 with the knife. The said Moorthy sustained grievous injuries. Based on the complaint, a case was registered in Crime No.280 of 2014 for the offence under Sections 353, 332, 307 and 506(ii) IPC. The Inspector of Police visited the scene of occurrence, prepared observation mahazar and rough sketch, examined the witnesses and recorded their statement. During the course of investigation, the accused were arrested and confession statement recorded. On completion of investigation, charge sheet filed before the learned Judicial Magistrate No.I, Mayiladuthurai and the same was taken on file in PRC.No.22 of 2014. He further submitted that the first petitioner is one of the prominent rowdy who is monitored by Organized Crime Intelligence Wing and he has got around 29 cases against him, out of which, in 17 cases he was acquitted and the remaining cases are pending trial. As against the second petitioner, there are six cases against him, except for the conviction in the above case, all the other five cases are pending trial. He would further submit that the petitioners were actively involving in one case or other. Hence, he prays for dismissal.



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5.Considering the submissions and on perusal of the materials, it is seen that the petitioners are confined in prison from the date of judgment. Though it is contended that the petitioners have a long history of criminal cases, in most of the cases they were acquitted and in pending trial cases, they were already granted bail. In this case, admittedly PW1, PW5 and PW6 are the projected eye witnesses and their evidences are contradictory to each other. The medical evidence does not confirm the ocular evidence. From the evidence of PW9 and PW10 and the documents Ex.P8 and E.P9, it is seen that the conviction of the petitioners under Section 307 IPC cannot be sustainable. The occurrence took place in a public place but no public witnesses examined in this case. The documents reached the Court belatedly. Further, it is not in dispute that charge under Section 307 IPC has not been framed against A2 but without alteration of charge, the Trial Court convicted the second petitioner/A2 under Section 307 IPC, which is not proper. The arrest and recovery in this case is highly doubtful. There is nothing to show as to how and when A1 was arrested in this case. Thus, the conviction of the petitioners needs re-consideration.



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6. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioners is suspended till the disposal of the revision and they are ordered to be enlarged on bail, on condition that they shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) each with two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Mayiladuthurai.

7. Further, finding that the petitioners have got chequered carrier, the petitioners shall appear before the respondent police every Monday at 10.00 a.m., except on the days when they are required to appear before the Trial Court in the cases pending against them.

8. Accordingly, this Miscellaneous Petition is ordered.

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Index: Yes/No
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To

- 1.The Additional District and Sessions Judge,
Mayiladuthurai.
- 2.The Judicial Magistrate No.I,
Mayiladuthurai.
- 3.The Principal Assistant Sessions Judge,
Mayiladuthurai.
- 4.The Inspector of Police,
Mayiladuthurai Police Station,
Mayiladuthurai.
- 5.The Superintendent,
Central Prison,
Trichy.
- 6.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

cse

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