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*Crl.M.P.Nos.11353 & 11884 of 2024
in Crl.R.C.No.1313 of 2024*

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in
Crl.R.C.No.1313 of 2024

M. NIRMAL KUMAR, J.

These Criminal Miscellaneous Petitions have been filed by the petitioner, seeking to suspend the sentence imposed on the petitioner passed by the I Additional District and Sessions Judge, Salem in C.A.No.159 of 2023 dated 23.04.2024, confirming the conviction and sentence imposed by the learned Judicial Magistrate No.4, Salem District in C.C.No.198 of 2017 by judgment dated 18.08.2023, pending disposal of above Criminal revision and enlarge the petitioner on bail and to exempt the petitioner from surrendering before the Lower Court.

2.The petitioner/accused in C.C.No.198 of 2017 was convicted by the trial Court by judgment dated 18.08.2023 and sentenced to undergo three months simple imprisonment for offence under Section 279 of I.P.C. and two years simple imprisonment for offence under Section 304A of I.P.C. Aggrieved against the same, he preferred an appeal in C.A.No.159 of 2023 before the learned I Additional District and Sessions Judge, Salem. The



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learned Sessions Judge, by judgment dated 23.04.2024, dismissed the appeal confirming the conviction and sentence passed by the trial Court, against which, he filed a revision before this Court in Crl.R.C.No.1313 of 2024 along with the instant miscellaneous petition seeking suspension of sentence and bail.

3.The gist of the case is that on 26.04.2017, PW6/Special Sub Inspector of Police received a complaint from PW1/de-facto complainant stating that his father Ramamoorthy, aged about 72 years left the house in his Honda Activa two wheeler bearing Registration No.TN-30-F-9425 and at about 8.30 a.m. a passer-by informed the de-facto complainant that his father met with an accident, sustained injury near the petrol bunk. PW1 rushed to the scene, where he was informed that at about 7.15 a.m. while the de-facto complainant's father was turning towards the petrol bunk, at that time Maruti Swift car proceeding towards Dadagapatty from Seelanaickenpatty Check post from south to north came in a rash and negligent manner dashed against the two wheeler of the deceased, caused accident and injury to the de-facto complainant's father and later his father declared dead. On registration of F.I.R., the Investigating Officer went to the scene of occurrence, prepared



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observation mahazar in the presence of witnesses, conducted inquest, examined the Doctor, collected Accident Register and post-mortem certificate. In the meanwhile, the Honda Activa Scooter and Maruti Swift car were produced before the Motor Vehicle Inspector, who gave a report and charge sheet filed in this case.

4.During trial, on the side of the prosecution, PW1 to PW7 examined, Exs.P1 to P10 marked. On the side of the defence no witnesses examined and no documents 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 and the Appellate Court confirmed the same.

5.The contention of the learned counsel for petitioner is that in this case, PW1 admittedly is not the eyewitness to the accident. PW2 and PW3 are projected eyewitnesses, who state that both of them were proceeding towards the Uzhavarsanthai at Dadagapatty, at that time they saw an old man in his two wheeler standing near the signal proceeding towards Namakkal. At that time, Maruti Swift car, which came in the opposite direction dashed against him. The other eyewitness PW5 states that he was filling the petrol in



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the petrol bunk at that time he saw the accident. But from the rough sketch and the observation mahazar it is seen that it is the deceased, who came in a wrong direction violating the traffic rules, has contributed to the accident. The car came in a normal speed and not in a rash and negligent manner. Further the witnesses not identified the petitioner is the driver of the car. In this case, the Motor Vehicle Inspector not examined to prove that there was no mechanical difficult in both the vehicles. The identity of the driver not proved but the trial Court convicted the petitioner. These facts not considered by both the Courts below.

6.The learned Prosecutor submitted that the petitioner is a business man having Poultry farm and other business. Due to his business exigency, he drove the car in a rash and negligent manner. He was proceeding to the business place with high speed at that time the victim was waiting for the signal, the petitioner dashed against the victim, who sustained injuries all over the body and died in the hospital. Admittedly, in this case, PW2, PW3 and PW5 are the eyewitnesses, who saw the occurrence, Maruti Swift car of the petitioner causing accident. At the time of marking Motor Vehicle Report, no objection made. But the petitioner now raising objection for non



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examination of the Motor Vehicle Inspector and Post-mortem Doctor not proper and sustainable. These points already raised by the petitioner both in the trial Court and in the Appellate Court. Hence, prays for dismissal of the petition.

7.The learned counsel for petitioner submitted that the petitioner is suffering with health ailments, he is advised bed rest. Further in this case the identity of the driver of the car/petitioner not proved. Further submitted that the petitioner has arguable points and fair chance to succeed in this revision. He further submitted that the petitioner is ready to deposit Rs.1,00,000/- (Rupees One lakh only) without prejudice to his contentions in the revision case. Hence, he prays for granting suspension of sentence to the petitioner.

8.In this case the identity of the driver of the car not satisfactorily proved, there is contradictions in the evidence with regard to the manner of the accident. This Court finds force in petitioner's contention, the conviction to be reconsidered. Further, petitioner voluntarily comes forward to pay Rs.1,00,000/- without prejudice to his contentions, this Court is inclined to suspend the sentence imposed on the petitioner.



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9. 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 Revision:

(a) The petitioner shall deposit the amount of Rs.1,00,000/- (Rupees One lakh only) in favour of Sri Ramachandra University, Porur Branch, Sri Ramachandra University, Ramachandra Nagar, Porur, Chennai-600 116 in A/c.No. CA 6203243021, IFSC Code:IDIB000S180 Indian Bank. This amount of Rs.1,00,000/- shall be utilized for the purpose of head and neck cancer surgeries, Department of Oral and Maxillofacial Surgery.

(b) the petitioner/accused 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 learned Judicial Magistrate No.IV, Salem.

(c) 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



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Cards or Bank Pass Books to ensure their identities.

(d) The petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m., 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.

10. Accordingly, these Criminal Miscellaneous Petitions are ordered.

23.08.2024
(2/2)

Index : Yes/No
Internet : Yes/No
Speaking order/Non speaking order
Neutral citation : Yes/No
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To

- 1.The Inspector of Police,
TIW Police Station,
Salem City.
- 2.The I Additional District and Sessions Judge,
Salem.
- 3.The Judicial Magistrate No.4,
Salem District.
- 4.The Public Prosecutor,
High Court, Madras.

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**23.08.2024
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