



CrI.M.P.No.11275 of 2024 in CrI.R.C.No.1293 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.M.P.No.11275 of 2024 in
CrI.R.C.No.1293 of 2024

Durairaj,
S/o.Varadharaj.

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Tirchengode Rural Police Station,
Namakkal District.
(Crime No.328/2013).

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 438(1) of BNSS, to call for the records in CrI.A.No.79 of 2022 on the file of the II Additional District and Sessions Judge, Tiruchengode, dated 21.06.2024 by allowing the order of conviction imposed in judgment, dated 08.09.2022 made in C.C.No.3 of 2014 on the file of the Judicial Magistrate, Tiruchengode, Namakkal and to set aside the same.

For Petitioner : Mr.M.Mohamed Riyaz

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER



The petitioner was convicted for offence under Section 304(A)(2 counts) of IPC and sentenced to undergo simple imprisonment for one year (each count) and to pay a fine of Rs.5,000/- (each count) in default to undergo simple imprisonment for a period of one month and for offence under Section 279 of IPC, the petitioner to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for a period of one month simple imprisonment. Challenging the same, the petitioner preferred an appeal before the learned II Additional District and Sessions Judge, Tiruchengode in Crl.A.No.79 of 2022 and the same was dismissed *vide* judgment, dated 21.06.2024 confirming the judgment of the trial Court. Aggrieved over the same, the present criminal revision case and the suspension of the sentence.

2.Case of the prosecution is that on 24.07.2013 at about 01.45 p.m, the deceased Ayyavoo and his wife Boomathi while returning after attending condolence in their TVS XL Super bearing Reg.No.TN-34-J-7768, the petitioner said to have driven lorry bearing Reg.No.TN-28-D-2295 in rash and negligent manner, hit the TVS XL and caused the accident. Due to which, the said Ayyavoo and his wife Boomathi died. After causing the accident, the petitioner continued to drive the lorry in a rash and negligent



manner and sped away. PW14 chased and stopped the lorry and identified the petitioner is the Driver. On the complaint (Ex.P1), PW17/Sub Inspector of Police registered FIR (Ex.P7) in Crime No.328 of 2013, visited scene of occurrence, prepared Observation Mahazar (Ex.P3), Rough Sketch (Ex.P8), examined the witnesses, recorded their statement, sent both vehicles for Motor Vehicle Inspection and sent the body for post mortem. On conclusion of investigation, charge sheet filed before the trial Court. During trial, on the side of the prosecution, 19 witnesses examined as PW1 to PW19 and 10 documents marked as Exs.P1 to P10. 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 though PW1, PW3, PW6, PW10, PW11, PW12, PW13 and PW14 projected as eye witnesses, the Trial Court disbelieved the said witnesses except PW11 and PW14. The evidence of PW11 is that when he was proceeding on the road, the accident took place. But PW11 not stated about the vehicle number and not identified the petitioner except by naming him. Further PW11 does not state about the presence of PW14 in the scene of occurrence. The evidence



of PW14 is that at the time of accident, Ayyavoo had valid license, vehicle registration certificate and other documents and the petitioner was apprehended on the same day of accident. But the evidence of the Investigating Officer/PW18 is that the deceased Ayyavoo had no valid license for his two wheeler TVS XL and the petitioner was arrested on the next day of the accident *i.e.*, on 25.07.2013. Hence, the presence of PW11 and PW14 are highly doubtful which was not considered by both the Courts below. Hence, prays for suspension of sentence.

4.The learned Additional Public Prosecutor appearing for the respondent Police filed counter and submitted that in this case, on complaint (Ex.P1) of PW1, FIR (Ex.P7) registered by PW17/Sub Inspector of Police and forwarded to PW18. PW18 conducted major portion of the investigation, visited the scene of occurrence, prepared Observation Mahazar (Ex.P3), Rough Sketch (Ex.P8), examined the witnesses present in the scene of occurrence and recorded their statements. Since there was condolence nearby the scene of occurrence, almost eight persons cited as eye witnesses who are all identified the lorry number and its driver *i.e.*, the petitioner. The vehicles both lorry and TVS XL bike produced for Motor



Vehicle Inspection and body was sent for postmortem. On collection of Motor Vehicle Inspector Report (Ex.P6), postmortem certificates (Exs.P4 & P5) and other documents, charge sheet filed before the Trial Court. The Trial Court on the evidence and materials had come to the conclusion that the petitioner is the reason for the accident and passed judgment of conviction which was affirmed by the lower appellate Court.

5.At this stage, the learned counsel for the petitioner submitted that now the petitioner surrendered before the Judicial Magistrate, Tiruchengode/Trial Court and he produced the copy of surrender order, dated 28.08.2024 and acceptance of the learned Magistrate.

6.Considering the submissions and on perusal of the materials, it is seen that though several persons cited as eye witnesses, the Trial Court disbelieved their evidence except for PW11 and PW14. The presence of PW11 and PW14 is also doubtful since PW11 and PW14 not mentioned their presence in their evidence of each other. It is also to be seen that the manner in which the petitioner was identified is also doubtful. PW18 confirms petitioner arrested on the next day and the rider of TVS XL had no



valid license, is quite contra to the evidence of PW14. Hence, the judgment of the Courts below needs reconsideration.

7.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 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 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, this Miscellaneous Petition is ordered.

29.08.2024
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Note: Issue Order Copy on 29.08.2024.



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To

WEB COPY

- 1.The II Additional District and Sessions Judge,
Tiruchengode.
- 2.The Judicial Magistrate,
Tiruchengode,
- 3.The Central Prison,
Salem.
- 4.The Inspector of Police,
Tiruchengode Rural Police Station,
Namakkal District.
- 5.The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR., J.

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