



Crl.M.P. No. 11622 of 2024
in
Crl.R.C. No. 1362 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2024

CORAM

THE HON'BLE MR. JUSTICE M. NIRMALKUMAR

Crl.M.P. No. 11622 of 2024
in
Crl.R.C. No. 1362 of 2024

1. Sivakumar
2. Mrs. Sumitha ..Petitioners

Vs.

The State rep. by
The Inspector of Police,
Nagapattinam Town Police Station,
Nagapattinam
(Crime No. 111 of 2021) ..Respondent

Prayer: Criminal Miscellaneous petition under Section 389(2)
Cr.P.C./Section 430(1) of BNSS Act seeking to suspend the sentence
imposed by the Sessions Court, Nagapattinam in Criminal Appeal No. 38 of
2023 by judgment dated 26.06.2024 thereby confirming the conviction and
sentence imposed by the Assistant Sessions Court/Chief Judicial Magistrate
Court in S.C. No. 20 of 2022 by judgment dated 21.07.2023 till the disposal



Crl.M.P. No. 11622 of 2024
in
Crl.R.C. No. 1362 of 2024

WEB COPY of the criminal revision.

For Petitioners :: Mr.K.M. Subramanian

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

O R D E R

The petitioners, who are accused Nos. 2 and 3 in S.C. No. 20 of 2022 were convicted by the Trial Court by judgment dated 21.07.2023 for offences under Section 120B IPC and Section 307 r/w 109 IPC and each one of them was sentenced to undergo 6 months simple imprisonment and to pay a fine of Rs.2000/- carrying a default sentence of one month simple imprisonment for the offence under Section 120B IPC and to undergo 3 years rigorous imprisonment, pay a fine of Rs.10,000/- carrying a default sentence of 2 months simple imprisonment for the offence under Section 307 r/w 109 IPC. Aggrieved against the said conviction and sentence, the petitioners preferred an appeal in Crl.A. No. 38 of 2023 before the Sessions Court, Nagapattinam and by judgment dated 26.06.2024, the appeal came to be dismissed confirming the conviction and sentence imposed by the Trial Court. As against the said dismissal, the present revision is filed.



WEB COPY



Crl.M.P. No. 11622 of 2024
in
Crl.R.C. No. 1362 of 2024

2. The contention of the learned counsel for the petitioners is that in this case, the de facto complainant, examined as P.W.1 and the 2nd petitioner are cousins. There appears to be some money lending dispute between them. The 2nd petitioner is running a textile shop and the de facto complainant, owns a boat and he is in the fishing business. The case projected by the de facto complainant is that the petitioners had engaged one Chithan/1st accused in this case to do away with the de facto complainant since the de facto complainant was demanding return of money lent to the petitioners. In this case, except P.W.1, other independent witnesses not supported the case of the prosecution. Though the occurrence is said to have taken place on a public road in broad daylight, none of the public witnesses supported P.W.1. Initially, FIR registered only against the 1st accused and thereafter, on his confession, the petitioners were arrayed as accused. Learned counsel for the petitioners would further submit that pursuant to the confession, no recovery was made from the petitioners. Since there was money dispute between the petitioners and the de facto complainant, they



Crl.M.P. No. 11622 of 2024
in
Crl.R.C. No. 1362 of 2024

have been falsely implicated. He would further submit that for the charges of conspiracy and abetment framed against the petitioners, there is no evidence. Hence, he would submit that the sentence may be suspended. The learned counsel also brought to the notice of this Court that the petitioners have surrendered before the Lower Court on 27.08.2024 and produced the surrender certificate.

3. Learned Additional Public Prosecutor filed his counter and submitted that the de facto complainant and the 2nd petitioner are cousins. The de facto complainant owns a boat and he is engaged in fishing business while the 2nd petitioner runs a textile showroom. The 2nd petitioner had borrowed a sum of Rs.18 lakhs from the de facto complainant for her business and when the de facto complainant demanded the return of the amount, the 2nd petitioner and her brother-in-law/1st petitioner conspired together and engaged Chithan/1st accused to do away with the de facto complainant, paid him a sum of Rs.20,000/- as advance and agreed to pay the balance sum of R.1 lakh after the completion of the attack on the



Crl.M.P. No. 11622 of 2024
in
Crl.R.C. No. 1362 of 2024

de facto complainant. The 1st accused/Chithan attacked the de facto complainant and thereafter, the complaint was lodged. As de facto complainant was inflicted with cut injury on his neck, he was immediately rushed to the Government Hospital by one Ramkumar. The Doctor, who admitted him as an in-patient stated that but for the timely treatment and medical intervention, the life of de facto complainant could not have been saved. The 1st accused had given a confession admitting that at the instance of the petitioners, he had committed the offence. During trial, on the side of the prosecution, P.W.s 1 to 12 were examined and Exs.P1 to P10 were marked. On completion of trial, the Trial Court had convicted the petitioners for the aforementioned offences and the same was confirmed by Lower Appellate Court as well. In this case, P.W.1 is an injured witness, who deposed as to how the 1st accused/Chithan cut his neck and caused an injury. It is not the number of witnesses that counts but it is the quality of witnesses that matters. The evidence of P.W.1 inspires confidence based on which the Trial Court convicted the petitioners. Hence, learned Additional Public Prosecutor prays for dismissal of the petition.



Crl.M.P. No. 11622 of 2024
in
Crl.R.C. No. 1362 of 2024

WEB COPY

4. Considering the submissions made on either side and on perusal of the records, it is seen that initially, the name of the petitioners did not find place in the FIR and they were included on the confession of the 1st accused. Admittedly, the petitioners were not present at the scene of occurrence and no overtact has been attributed to them vis-a-vis the de facto complainant. They have been framed since they had some money dispute. The maximum sentence imposed is for 3 years and during investigation and trial, they were on bail. The conviction and sentenced imposed on the petitioners under Section 120B IPC and 109 IPC, in the absence of any other supporting material, requires re-consideration.

5. Hence, this Court is inclined to suspend the sentence in respect of the petitioners. Accordingly, the relief of suspension of sentence and bail are granted to the petitioners on the following conditions till the disposal of the above criminal revision:

(a) The petitioners/accused Nos. 2 and 3 are ordered to be enlarged on bail, on condition that each one of them shall execute a bond for a



WEB COPY



Crl.M.P. No. 11622 of 2024

in

Crl.R.C. No. 1362 of 2024

sum of Rs.10,000/- (Rupees Ten thousand only) with two sureties, each for a like sum to the satisfaction of the learned Assistant Sessions Judge/Chief Judicial Magistrate Court, Nagapattinam.

(b) The petitioners/accused Nos. 2 and 3 and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Assistant Sessions Judge/Chief Judicial Magistrate, Nagapattinam, may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioners 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 they are not able to appear before the Trial Court on that day, they 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 their absence as directed by the Trial Court.



WEB COPY



Crl.M.P. No. 11622 of 2024
in
Crl.R.C. No. 1362 of 2024

M. NIRMALKUMAR,J.

nv

6. The Criminal Miscellaneous Petition is ordered accordingly.

28.08.2024

nv

2/2

Crl.M.P. No. 11622 of 2024
in
Crl.R.C. No. 1362 of 2024