



CrI.M.P.No.11805 of 2024 in CrI.R.C.No.1400 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.M.P.No.11805 of 2024 in
CrI.R.C.No.1400 of 2024

K.Seshachalam,
S/o.Krishnamurthy

... Petitioner

Vs.

The State,
Rep.by Inspector of Police,
Arani Gramiya Police Station,
Thiruvannamalai District.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 438(1) of the Bharatiya Nagarik Suraksha Sanhita, 2023, to suspend the sentence imposed on him by the appellate Court in the judgment passed in CrI.A.No.19 of 2016 dated 30.04.2024 by the Additional District and Sessions Court (Fast Track Court), Arani, confirming the judgment passed in S.C.No.63 of 2015 dated 22.09.2016 by the Assistant Sessions Court, Arani pending disposal of the criminal revision case.

For Petitioner : Mr.S.B.Viswanathan

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



ORDER

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The petitioner/A2 was convicted *vide* judgment, dated 22.09.2016 in S.C.No.63 of 2015 by the learned Assistant Sessions Judge, Arani (Trial Court) and sentenced to undergo five years Rigorous Imprisonment and to pay a fine of Rs.15,000/- in default to undergo Simple Imprisonment for one year for offence under Section 307 IPC. Challenging the same, the petitioner preferred an appeal before the learned Additional District and Sessions Judge (Fast Track Court), Arani (Lower Appellate Court) in Crl.A.No.19 of 2016 and the same was dismissed by judgment, dated 30.04.2024 confirming the judgment of the Trial Court. Aggrieved over the same, the present criminal revision case is filed and the suspension of sentence.

2.The learned counsel for the petitioner submitted that originally case proceeded against three persons *viz.*, petitioner/A2 and his two brothers Sugumar/A1 and Pandiyan/A3. A1 was convicted for offence under Section 341 IPC and imposed to pay fine of Rs.1,000/-. A3 was acquitted from all the charges. As regards the petitioner is concerned, he was convicted as



stated above. In this case, four persons (PW1 to PW3 & PW6) projected as eye witnesses of which two witnesses (PW2 & PW3) not supported the case of the prosecution. As regards the evidence of PW1 and PW6 are concerned, there is major contradiction. The evidence of PW6 is that in front of his house, PW1 and his brother-in-law/A1 were having scuffle and fighting. PW6 intervened and separated them. At that time, PW6 felt wetness on the chest of PW1 and also found blood oozing from his chest. Hence, PW6 immediately informed 108 Ambulance. PW2 and PW3 accompanied PW1 to hospital. The evidence of PW6 is very categorical except PW1 and A1, no one in the place of occurrence. As regards, the petitioner and other accused/A3 is concerned, they came later to the occurrence place and had a fight with PW1. In this case, from the evidence of PW8 and PW9/Doctor, it is seen that there is only one stab injury on the chest of PW1, which is grievous in nature. The Trial Court convicted the petitioner on the evidence of PW1 and PW8 and PW9/Doctors. But PW6 the other eye witness gives different version since A1 being a brother-in-law of PW1. To safeguard his brother-in-law, PW1 made the petitioner as scapegoat and falsely implicated, which the Courts below failed to consider.



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3.The learned Additional Public Prosecutor appearing for the respondent Police filed counter and submitted that on 16.05.2024, at about 04.00 hours, the respondent Police received intimation from the Government Hospital, Arani. The respondent Police went to the hospital and conducted enquiry with Panneer Selvam/PW1 who was under treatment and recorded his statement. PW1 stated that he was residing at Bajanai Koil Street, M.P.Thangal Village, Arani Taluk and his sister was given in marriage to A1. A1 approached PW1 and asked money for cultivation. PW1 initially arranged a sum of Rs.13,000/- for A1. Thereafter PW1 paid a sum of Rs.10,000/- to A1. PW1 asked to repay the amount but A1 refused to repay. On 15.05.2014, at about 10.00 hours, PW1 was nearing Vanaraj house, at the time A1 along with his brothers A2/petitioner and A3 interrupted PW1 and abused him. A1 and A2 hold PW1's hands and A3 stabbed the knife at PW1's chest. PW1 was in a pool of blood. All the accused threatened and escaped from the scene of occurrence. Immediately, PW1 was taken to the Government Hospital through 108 ambulance and treatment was given. He further submitted that on receipt of the complaint (Ex.P1) from PW1, an FIR (Ex.P5) in Crime No.143 of 2014 registered for offence under Section 341, 254(b), 323, 307 of IPC against A1 to A3 on 16.05.2014 by PW10.



Thereafter, PW10 went to the scene of occurrence, prepared Observation Mahazar (Ex.P2), Rough Sketch (Ex.P6) in the presence of witness, recorded their statements, obtained wound certificate of PW1 from the Government Hospital, Arani, arrested the accused, recorded their confession, seized the weapons (MO1 & MO2) under seizer mahazar. On completion of investigation, PW11 filed charge sheet before the Trial Court. During trial, on the side of the prosecution, eleven witnesses examined as PW1 to PW11 and eight documents marked as Exs.P1 to P8 and two Material Objects collected (MO1 and MO2). On the side of the defence, no witness examined but one document marked as Ex.D1. On the evidence and materials, the Trial Court convicted the petitioner as stated above and the same was confirmed by the Lower Appellate Court. Hence, he prays for dismissal of the revision.

4.Considering the submissions and on perusal of the materials, it is seen that four persons (PW1 to PW3 & PW6) projected as eye witnesses of which two witnesses (PW2 & PW3) not supported the case of the



prosecution. Added to it, the evidence of PW6 is that the petitioner/A1 and A3 came to the scene of occurrence only at a later point of time and there are contradictions in the prosecution witnesses. Hence, the conviction of the petitioner needs reconsideration. It is to be noted that the petitioner surrendered before the Trial Court on 02.08.2024 and proof of the same produced.

5.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.

6.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



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date of his absence as directed by the Trial Court. Accordingly, this

Miscellaneous Petition is ordered.

11.09.2024

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To

- 1.The Additional District and Sessions Judge (Fast Track Court),
Arani.
- 2.The Assistant Sessions Judge,
Arani.
- 3.The Central Prison,
Vellore.
- 4.The Inspector of Police,
Arani Gramiya Police Station,
Thiruvannamalai District.
- 5.The Public Prosecutor,
Madras High Court.

M.NIRMAL KUMAR., J.

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