



*Crl.M.P.No.12882 of 2024
in Crl.R.C.No.1547 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.10.2024

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.12882 of 2024
in
Crl.R.C.No.1547 of 2024

Savarimuthu

... Petitioner

Vs.

The State rep. by
Station House Officer,
Kadampuliyur Police Station,
Crime No.471 of 2014

... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 397(i) of Cr.P.C. / Section 438(1) of BNSS, praying to suspend the sentence and imprisonment imposed by the Judicial Magistrate No.II, Panruti in C.C.No.89 of 2015 dated 29.12.2022 and confirmed by the Principal District and Sessions Judge at Cuddalore in C.A.No.10 of 2023 dated 09.07.2024 and enlarge the petitioner on bail, pending disposal of the above Criminal Revision Petition.

For Petitioner : Mr.T.Gnana Banu

For Respondent : Mr.A.Damodaran,
Public Prosecutor



*Crl.M.P.No.12882 of 2024
in Crl.R.C.No.1547 of 2024*

ORDER

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The petitioner / accused was convicted by the Trial Court in C.C.No. 89 of 2015 by judgment dated 29.12.2022 and sentenced to pay a fine of Rs.1,000/- for offence under Section 279 of IPC in default to undergo one month simple imprisonment and pay a fine of Rs.500/- for offence under Section 337 of IPC in default to undergo one month simple imprisonment and sentenced to undergo simple imprisonment of one year and pay a fine of Rs.5,000/- for offences under Section 304-A of IPC in default to undergo two months simple imprisonment, against which, he preferred an appeal before the Sessions Court in Crl.A.No.10 of 2023. The Sessions Judge by judgment dated 09.07.2024 dismissed the appeal, confirming the conviction and sentence of the Trial Court, against which, the present petition.

2. The contention of the petitioner is that in this case, the witnesses were admitted that the place of occurrence is a 'S' type of road and it was raining at the time of occurrence and it is not possible to drive the vehicle in a rash and negligent manner in such road condition and weather condition. P.W.1, who said to be the rider of the motor bike states that the deceased was pillion rider and the lorry had come in the opposite direction in a rash and negligent manner and caused the accident and further, he had given a version



*Crl.M.P.No.12882 of 2024
in Crl.R.C.No.1547 of 2024*

that he along with his friend had tried to pull the deceased / Radhakrishnan from the tyre of the lorry. P.W.2 & P.W.3 who were riding the two wheeler ahead of the P.W.1 have been projected as eye-witnesses to the occurrence.

3. In this case, P.W.1 though seems to be the rider of the vehicle fell down and sustained injuries. The Doctor treated P.W.1 not examined. In this case, the presence of P.W.1, P.W.2 & P.W.3 is highly improbable. The rough sketch would show that the vehicle had come across the road and it is the reason for the accident. He further submitted that neither the Motor Vehicle Inspector nor the Doctor, who said to have treated P.W.1 and post-mortem Doctor not examined as witnesses. The Accident Information Report / Ex.P6, Post-mortem report - Ex.P7, Wound Certificate / Ex.P8 and the Accident Information Report / Ex.P9 all marked through Investigation Officer and it cannot be said that these documents have been proved in the manner known to law. These facts have not been considered both by the Trial Court as well as the lower Appellate Court.

4. The learned Additional Public Prosecutor on the other hand, submitted that the rider of the bike sustained injuries and the pillion rider, Radhakrishnan died due to the accident. The lorry driven by its driver in a



*Crl.M.P.No.12882 of 2024
in Crl.R.C.No.1547 of 2024*

rash and negligent manner came in the opposite direction and dashed against the bike and thereby, caused the accident and death. The petitioner, P.W.1 is the eye-witness who along with the deceased was taken to the Hospital, given treatment. The medical record / Ex.P8 would confirm the injuries sustained by P.W.1. P.W.2 & P.W.3 are the other two persons who are riding in the bike ahead of the P.W.1's bike and they claimed that they had seen the lorry coming in the opposite direction and causing the accident. There are three eye-witnesses to the occurrence and one of them is the injured eye-witness. The learned Additional Public Prosecutor would failly submits that in the case, Doctor and the motor vehicles Inspector not examined and the documents / Exs.P6 to P9 marked through the Investigation Officer and while marking the document, there was no objection on the contra objection presently raised. The petitioner had now surrendered and he is confined in the Central Prison, Cuddalore.

5. Considering the defence in this case, Exs.P6 to P9 have been marked through the Investigation Officer. These documents ought to be marked through the Motor Vehicle Inspector and the Doctors. The injuries sustained by P.W.1 and the would certificate / Ex.P8, marked by Investigation Officer, the presence of P.W.1 becomes doubtful. Likewise P.W.2 & P.W.3 presence



*Crl.M.P.No.12882 of 2024
in Crl.R.C.No.1547 of 2024*

is also highly doubtful. PW.1 to P.W.3 evidence is contradictory and the same needs reconsideration.

6. In view of the same, this Court finds that the conviction of the petitioner needs reconsideration. Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal revision:

(a) 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 Special Judge, Judicial Magistrate No.II, Panruti.

(b) 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 Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall appear before the Trial Court on the first working day of every English Calendar once in three months at 10.30 a.m., until the disposal of the appeal and if he is not able to appear before the Trial Court on that day, he shall make arrangements to file an application under



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*Crl.M.P.No.12882 of 2024
in Crl.R.C.No.1547 of 2024*

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.

7. Accordingly, this Criminal Miscellaneous Petition is ordered.

17.10.2024
(2/2)

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Index : Yes/No

Internet : Yes/No

Speaking order/Non speaking order

Neutral citation : Yes/No



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To

1. The Principal District and Sessions Judge,
Cuddalore.
2. The Judicial Magistrate No.II,
Panruti.
3. The Station House Officer,
Kadampuliyur Police Station.
4. The Public Prosecutor,
High Court, Madras.



*Crl.M.P.No.12882 of 2024
in Crl.R.C.No.1547 of 2024*



WEB COPY



*Crl.M.P.No.12882 of 2024
in Crl.R.C.No.1547 of 2024*

M. NIRMAL KUMAR, J.

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Crl.M.P.No.12882 of 2024
in
Crl.R.C.No.1547 of 2024

**17.10.2024
(2/2)**