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Crl.M.P.No.13006 of 2024 in Crl.R.C.No.1563 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.13006 of 2024 in
Crl.R.C.No.1563 of 2024

Vijayakumar

... Petitioner

Vs.

The State Rep by
The Inspector of Police,
Vellore South L & O Police Station,
Vellore District.
(Crime No.110 of 2022).

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 438 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to suspend the sentence passed in Crl.A.No.143 of 2023 on the file of the 1st District and Sessions Judge, Vellore, Vellore District vide judgment dated 31.07.2024 confirming the judgment passed in C.C.No.165 of 2022 on the file of the Judicial Magistrate No.I, Vellore, Vellore District vide judgment, dated 01.09.2023.

For Petitioner : Mr.N.Sathish Kumar
For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

The petitioner was convicted *vide* judgment, dated 01.09.2023 in C.C.No.165 of 2022 by the learned Judicial Magistrate No.I, Vellore (Trial Court) and imposed a fine of Rs.1,000/- in default to undergo Simple



Imprisonment for one month and sentenced to undergo Simple

Imprisonment for one year and to pay a fine of Rs.10,000/- in default to undergo three months Simple Imprisonment for offence under Section 304(A) of IPC. Challenging the same, the petitioner preferred an appeal before the learned I Additional District Judge, Vellore (Lower Appellate Court) in Crl.A.No.143 of 2023 and the same was dismissed *vide* judgment, dated 31.07.2024 confirming the judgment of the Trial Court. Aggrieved over the same, the present criminal revision case and the suspension of sentence.

2.The learned counsel for the petitioner submitted that the petitioner/Auto Driver was driving his Auto bearing Reg.No.TN-23BD-8101 from North to South on the left side of the road following the traffic rule and he took turn to the right side after signalling. At that time, the deceased came in his two wheeler bearing Reg.No.TN-23-CL-0924 on the opposite side of the road. Finding the Auto taking right turn, the petitioner unable to control his two wheeler, fell down and sustained injuries. Though PW2/daughter of the deceased was travelling as pillion rider, she not suffered any injuries and not took any treatment. The Postmortem Doctor



confirms that the injuries sustained on the skull is due to slip and fall of the deceased from his two wheeler. In this case, the deceased was not wearing any helmet at the time of accident and he contributed for the accident and also for the injuries sustained. In this case, the Motor Vehicle Inspector not examined during trial. Ex.P9 is the Motor Vehicle Inspection report for the Auto. In Ex.P9, it is clearly recorded that there is no dent or damage to Auto and there was no mechanical defect. If the auto had impact with the two wheeler by way of rash and negligence, definitely there should be some damages to the auto. The Trial Court giving reason on its own stating that the accident had taken place on 15.04.2022 and both the vehicles produced before the Motor Vehicle Inspector eleven days thereafter. Since the vehicles detained in the Police Station immediately after the occurrence, there is no possibility of any repair of damage. It is not the case of the prosecution the Auto was taken and the damage was repaired.

3.The learned counsel further submitted that in this case, all the witnesses are relatives and family members of the deceased. PW1 is the wife, PW2 is the daughter and PW4 and PW5 are the sons of the deceased.



PW6 and PW7 are the brothers of the deceased and PW8 and PW9 are the close relatives. The only independent witness is PW3, but PW3 not supported the case of the prosecution. Added to it, the Postmortem Doctor not examined and the Postmortem report (Ex.P7) marked through the Investigating Officer/PW10. The Courts below failed to consider all these aspects. He further submitted that the petitioner arrested on 30.09.2024 and detained in the Central Prison, Vellore.

4.The learned Additional Public Prosecutor appearing for the respondent Police filed counter objecting the submissions of the learned counsel for the petitioner and submitted that in this case, PW1/wife of the deceased lodged a complaint on 15.04.2022 at 05.15 p.m stating that when her husband/deceased was proceeding in his two wheeler Honda Activa bearing Reg.No.TN-23-CL-0924 from South to North near Sangamam Thirumana Mandapam along with his daughter Sweatha/PW2 to Jalakandeswarar Temple, at that time the Auto driven by the petitioner was coming in opposite direction and without proper signal suddenly the petitioner took a right turn and dashed against the two wheeler of the deceased. Due to which, the deceased fell down and sustained injuries.



PW3 not supported the case of the prosecution. PW4 and PW5 admitted that they came to the scene of occurrence after hearing about the accident. PW6 is the witness to the inquest. PW8 and PW9 are the witnesses to the Observation Mahazar (Ex.P2) and relative of the deceased. In this case, PW2 is the pillion rider who travelled along with her father/deceased and fell down during the accident. PW2 clearly deposed about the manner in which the petitioner had driven the Auto in a rash and negligent manner without signalling. The Postmortem report (Ex.P7) confirms the injuries sustained by the deceased. The petitioner not denied that he is not the Auto Driver. While marking the Postmortem report and Motor Vehicle Inspection Reports (Exs.P7 to P9), the petitioner not raised any objection during trial. In such circumstances, now he cannot take a stand that the documents not marked through the proper witness. Hence, the Courts below convicted the petitioner on the evidence and materials produced.

5.Considering the rival submissions and on perusal of the materials, it is seen that in this case, admittedly, PW1/defacto complainant/wife of the deceased not present in the scene of occurrence. PW2 is the pillion rider of the two wheeler driven by the deceased, but not sustained any injury. The other witnesses namely PW3 and PW4 are the sons of the deceased and PW5



and PW6 are brothers of the deceased. PW8 and PW9 are the relatives of the deceased. The only independent witness is PW3, but not supported the case of the prosecution. From the Motor Vehicle Inspection Report, it is seen that there is no damage to the Auto driven by the petitioner. The case is that the petitioner was proceeding from North to South, took a sudden right and dashed against the two wheeler driven by the deceased. The contention of the petitioner is that the deceased lost balance from his two wheeler, fell down, sustained injury and the petitioner's Auto not involved in the accident. The Motor Vehicle Inspection Reports (Exs.P8 & P9) confirms the petitioner's defence. The Postmortem Report (Ex.P7) confirms the injuries in the skull of the deceased. Since the deceased was not wearing helmet at the time of accident, slip and fall would have caused the injuries. In this case, Exs.P7 to P9 marked through the Investigating Officer/PW10 which was objected to. In the absence of the examination of the Postmortem Doctor and Motor Vehicle Inspector, it cannot be conclusively held Exs.P7 to P9 proved. In view of the same, the judgment of the Courts below needs reconsideration.

6.In view of the above, the Substantive Sentence of Imprisonment



Crl.M.P.No.13006 of 2024 in Crl.R.C.No.1563 of 2024

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.

7.Further, the petitioner shall appear before the Trial Court once in three months commencing from November 2024 on the first working day at 10.30 a.m till the disposal of the criminal revision. Accordingly, this Miscellaneous Petition is ordered.

01.10.2024
(2/3)

vv2

Note: Issue Order Copy on 01.10.2024.



Crl.M.P.No.13006 of 2024 in Crl.R.C.No.1563 of 2024

To

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- 1.The I Additional District Judge,
Vellore.
- 2.The Judicial Magistrate No.I,
Vellore.
- 3.The Central Prison,
Vellore.
- 4.The The Inspector of Police,
Vellore South L & O Police Station,
Vellore District.
- 5.The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR., J.

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Crl.R.C.No.1563 of 2024

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