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Crl.M.P.No.12791 of 2024
in Crl.A.No.1141 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2024

CORAM:

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

Crl.M.P.No.12791 of 2024

in

Crl.A.No.1141 of 2024

Ramesh

S/o.Ekambaram

... Petitioner/Accused

Vs.

1.State Represented by

The Assistant Commissioner of Police,
MKB Nagar Range,
Chennai – 600 039.
(Crime No.1167/2020)

2.Ms.Nalini

[R2 *suo-motu* impleaded vide order dated
12.09.2024 in Crl.A.No.1141 of 2024
by MNKJ]

... Respondents

PRAYER: Criminal Miscellaneous Petition filed under Section 430 of Bharatiya Nagarik Suraksha Sanhita, 2023, to suspend the sentence and conviction imposed against the petitioner by judgment in Spl.S.C.No.4 of 2022 dated 31.07.2024 passed by the Principal Sessions Judge, Special Court for SC/ST (POA) Act at Chennai and enlarge the petitioner on bail pending disposal of the above criminal appeal.



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in Crl.A.No.1141 of 2024

For Petitioner : Mr.R.Sasikumar

For Respondent-1 : Mr.R.Vinothraja
Government Advocate (Crl. Side)

For Respondent-2 : Mr.Ramprakash Rajagopal –
No appearance

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner seeking to suspend the sentence imposed in Spl.S.C.No.4 of 2022 dated 31.07.2024 passed by the Principal Sessions Judge, Special Court for Schedule Castes and Scheduled Tribes (Prevention of Atrocities) Act (in short “SC/ST (POA) Act”) at Chennai and enlarge the petitioner on bail pending disposal of the above criminal appeal.

2.The petitioner/Accused was convicted by the trial Court in Spl.S.C.No.4 of 2022 by judgment dated 31.07.2024 and sentenced to undergo one year simple imprisonment for offence under Section 417 of



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I.P.C., three years simple imprisonment for offence under Sections 3(1)(w)(ii) of SC/ST (POA) Act and to pay a fine of Rs.5,000/-, in default to undergo one month simple imprisonment, five years simple imprisonment for offence under Section 420 of I.P.C. and to pay a fine of Rs.5,000/-, in default to undergo one month simple imprisonment and five years simple imprisonment for offence under Section 3(1)(va) of SC/ST (POA) Act and to pay a fine of Rs.5,000/-, in default to undergo one month simple imprisonment. Aggrieved against the conviction, the petitioner preferred an appeal in Crl.A.No.1141 of 2024 before this Court along with petition seeking suspension of sentence and bail.

3.During trial, on the side of the prosecution, PW1 to PW14 examined and Exs.P1 to P27 marked. On the side of the defence, no witnesses examined and no documents marked. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, convicted the petitioner as stated above.



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4.The contention of the learned counsel for petitioner is that the petitioner and the de-facto complainant/victim/PW1 were friendly with each other for more than 11 years and they become so close and having living in relationship. During this relationship, the petitioner had given several amounts to the de-facto complainant/PW1 for various reasons. Apart from it she had also borrowed amount as loan from the petitioner and in discharge of the liability she had also issued cheque. The petitioner demanded return of loan amount and cheque of Rs.20,00,000/- given. When the cheque was presented the same got dishonoured. Hence, the petitioner issued statutory notice on 26.09.2020 and a reply was sent denying any liability by the respondent on 13.10.2020. The de-facto complainant infuriated with the demand made by the petitioner for the return of loan amount, projected a false case against the petitioner and lodged a complaint on 20.10.2020 as though the petitioner abused her, insulted her in public calling her by caste name. Further alleged that the petitioner committed the offence of cheating,



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using the victim, he obtained loan in HDFC Bank and other institutions and purchased two wheeler, electronic items, jewels and retained the same with him and thereafter not paid the loan amount and the de-facto complainant was forced by the banks and financial institutions to repay the loan amount. When the de-facto complainant requested the petitioner about the same, petitioner is said to have abused her by calling her caste name. This stand by the de-facto complainant would prove that a money dispute between the two individuals has been given a criminal and communal colour and the petitioner was falsely implicated in this case. The petitioner pursuant to the statutory notice filed a complaint under Section 138 of the Negotiable Instruments Act (in short “N.I. Act”) before the learned Judicial Magistrate-I, Tambaram in S.T.C.No.342 of 2021, which is pending trial. The second respondent/de-facto complainant not appeared and bailable warrant is pending. The petitioner is confined in Central Prison, Puzhal from 31.07.2024. Hence, he prays for granting suspension of sentence to the petitioner.



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5.The learned Government Advocate (Crl. Side) opposed the contention of the petitioner stating that petitioner not only used the victim physically, also used the victim to get loan from various banks and financial institutions. During the relationship, he got access to the cheque, which was signed by the de-facto complainant and using the same, he issued statutory notice to absolve from the loan liabilities as though the victim had taken loan from the petitioner. The petitioner had deceived and cheated the de-facto complainant. The de-facto complainant when questioned the petitioner about his act, he called the victim by phone on 03.09.2020 and abused her by calling her caste name. Not stopping with that he came to the de-facto complainant's house on 20.10.2020 and in front of others he abused her calling her caste name and threatened her. Thereafter, complaint lodged. The abuse, assault and intimidation was witnessed by PW2/neighbour of PW1, PW3/brother of PW1 and PW4/PW1's friend. Further, the bank witnesses,



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PW9, PW10 & PW11 confirm the transfer of money from the de-facto complainant's account to the petitioner's account. As and when the de-facto complainant was receiving amount as loan from the financial institutions, the same were immediately transferred to the petitioner's account and there is no re-credit to the de-facto complainant. Further submitted that during trial on the side of prosecution PW1 to PW14 examined and Exs.P1 to P27 marked. The bank statements/Exs.P9, P11 & P12 would clearly prove the money transaction and Ex.P17 would prove the de-facto complainant taking loan from HDFC Bank, Ex.P19 is the statement relates to purchase of two wheeler, Ex.P22 is the Bill for purchase of Sony T.V. and Ex.P23 is the Invoice for Samsung 3 Nos. mobile phones. The pledging of jewels of the de-facto complainant is confirmed by Ex.P25. The Trial Court on the evidence of witnesses and the materials produced had rightly convicted the petitioner. Hence, prays for dismissal of the petition.



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6.Considering the submissions made and on perusal of the materials available on record, it is not in dispute that the petitioner and the de-facto complainant/PW1 were friendly with each other and had close relationship for more than 10 years and they were also having living-in relationship. During this period, there are several transaction between them and the de-facto complainant had given herself and also allowed the petitioner to have dominance and handle all her accounts and transactions. After receipt of statutory notice in Section 138 of N.I. Act proceedings, she seems to be lodged the above complaint. In view the above, this Court finds that the conviction of the petitioner needs reconsideration. In view of the same, this Court is inclined to grant suspension of sentence to the petitioner.

7.Accordingly, the substantive sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and he is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of



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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 once in three months at 10.30 a.m. on the first working day of the month, until the disposal of the criminal 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 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.

9.Accordingly, this Criminal Miscellaneous Petition is ordered.

25.10.2024
(2/2)

Index : Yes/No

Internet : Yes/No

Speaking order / Non-speaking order

Neutral citation : Yes/No

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M. NIRMAL KUMAR, J.

rsi

To

1.The Assistant Commissioner of Police,
MKB Nagar Range,
Chennai – 600 039.

2.The Principal Sessions Judge,
Special Court for SC/ST (POA) Act,
Chennai.

3.The Superintendent of Prison,
Central Prison,
Puzhal, Chennai.

4.The Public Prosecutor,
High Court, Madras.

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**25.10.2024
(2/2)**