



*Crl.M.P.No.19530 of 2023
in Crl.RC.No.2154 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.02.2024

CORAM:

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

Crl.M.P.No.19530 of 2023
in
Crl.RC.No.2154 of 2023

K.Murugesan

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Deevattipatty Police Station,
Salem District.
Crime No.192/2010

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 397(1) of Cr.P.C to suspend the sentence of imprisonment imposed in the judgment dated 18.02.2023 made in C.A.No.114 of 2017 on the file of the First Additional District and Sessions Court, Salem confirming the judgment dated 19.09.2017 made in C.C.No.127 of 2010 on the file of the learned Judicial Magistrate, Omalur and enlarge the petitioner on bail pending disposal of the above revision petition.



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For Petitioner : Mr.M.Ganesh
for Mr.N.Manoharan

For Respondent : Mr.C.E.Pratap
Government Advocate [Crl. Side]

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner to suspend the sentence of imprisonment imposed in the judgment dated 18.02.2023 made in C.A.No.114 of 2017 on the file of the First Additional District and Sessions Court, Salem confirming the judgment dated 19.09.2017 made in C.C.No.127 of 2010 on the file of the learned Judicial Magistrate, Omalur and enlarge the petitioner on bail pending disposal of the above revision petition.

2.The petitioner was convicted by the Trial Court by judgment dated 19.09.2017 in C.C.No.127 of 2010 and sentenced to undergo three months imprisonment and to pay a fine of Rs.200/-, in default to undergo one week imprisonment for the offence under Section 336 IPC, to undergo three years imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one



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month imprisonment for the offence under Section 420 IPC and to undergo nine months imprisonment and to pay a fine of Rs.800/-, in default, to undergo one week imprisonment for the offence under Section 15(1) of the Indian Medical Council Act. Against which, the petitioner preferred an appeal before the Sessions Court in C.A.No.114 of 2017 and the learned First Additional District and Sessions Judge, Salem dismissed the appeal by judgment dated 18.02.2023 confirming the conviction and sentence passed by the Trial Court. Against which, the present revision is filed.

3.The case against the petitioner is that the petitioner/accused without possessing M.B.B.S. Degree was running a clinic in Chinnathampi Complex, Denishpet, Salem District during the relevant period. P.W.1, P.W.5 and P.W.8 took treatment from the petitioner/accused in his clinic. On 15.04.2010 at about 1.00 p.m., P.W.1 appeared before P.W.9/Sub-Inspector of Police and gave a complaint/Ex.P1, thereafter FIR/Ex.P4 in Crime No.192 of 2010 for the offence under Sections 336 and 420 of IPC and Section 15(1) of Indian Medical Council Act registered. P.W.10/Inspector of Police took up the investigation, proceeded to the place



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of occurrence, prepared observation mahazar/Ex.P2 and rough sketch/Ex.P5

at about 3.00 p.m. on the same day in the presence of P.W.6 and P.W.7.

During investigation, material objects were seized through Ex.P3/seizure mahazar and statement of witnesses recorded. On completion of investigation, final report filed before the Trial Court on 28.09.2010. Before the Trial Court, on the side of the prosecution P.W.1 to P.W.10 examined, Ex.P1 to Ex.P5 and M.O.1 to M.O.42 marked. On the side of defence, the petitioner/accused examined himself as D.W.1 and marked Ex.D1 to Ex.D4. On completion of trial, the Trial Court convicted the petitioner as stated above.

4.The contention of the learned counsel for the petitioner is that the petitioner is qualified medical practitioner who obtained medical degree from Calcutta and registered with Calcutta Medical Council vide Registration No.3666/2006. He would submit that the respondent police were constantly visiting the clinic, harassing the petitioner and also making unreasonable demand, against which the petitioner sent a representation to the higher officials of the respondent police and thereafter, since no action was taken,



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the petitioner preferred a petition before this Court in Crl.O.P.No.22556 of 2010. This Court by order dated 28.09.2010 disposed of the petitioner with a direction to conclude the enquiry on the petitioner's complaint. Along with the complaint, the petitioner submitted his educational credentials and registration certificate. To prove the same, the petitioner entered into the box as D.W.1, in his evidence he deposed about the same and marked Ex.D1 to Ex.D4. But the Trial Court failed to consider these aspects. He would further submit that the evidence of P.W.1, P.W.5 and P.W.8 are contradictory to each other. Though all the three witnesses state that P.W.1 was administered injection and thereafter, he was fainted, they have not stated as to what was the treatment given and what was the injection injected. Further, the witnesses P.W.1, P.W.5 and P.W.8 were not produced before any other Doctor to confirm about the wrong treatment given by the petitioner/accused. He further submitted that initially complaint was lodged by the petitioner against the Inspector of Police on 04.11.2009, as a counter blast the above case was registered against the petitioner. He would further submit that apart from IPC Offence, the Trial Court convicted the petitioner under Medical Council Act for which no steps taken to verify the



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educational credentials and registration of the petitioner with the Medical Council authorities. Hence, the conviction of the petitioner is not sustainable. He further submitted that the Lower Appellate Court had not independently considered and assessed the evidence and materials, on the other hand had mechanically convicted the petitioner.

5.The learned Government Advocate [Crl. Side] filed a counter and submitted that the petitioner who does not possess M.B.B.S. Degree was running a clinic, at that time, P.W.1 who took treatment with the petitioner got fainted. Based on his complaint, case was registered in Crime No.192 of 2010 for the offence under Sections 366, 420 IPC and 15(1) of Indian Medical Council Act. Thereafter, the Investigating Officer visited the place of occurrence, prepared observation mahazar and rough sketch and recorded the statement of witnesses. On completion of investigation, charge sheet filed. During the trial, on the side of the prosecution ten witnesses examined and marked five exhibits and 42 material objects. On the side of the defence, one witness examined and four exhibits marked. On conclusion of trial, the trial Court convicted the petitioner as stated above. The Lower



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Appellate Court dismissed the appeal preferred by the petitioner by confirming the judgment of the Trial Court. Hence, prays for dismissal.

6.Considering the submissions made and on perusal of the materials, it is seen that the specific case of the petitioner is that the petitioner is a qualified Doctor who got registered with the Medical Council of Calcutta. Admittedly, P.W.1, P.W.5 and P.W.8 were not examined before any other Doctor to confirm the wrong treatment given by the petitioner. Further, the petitioner's educational qualification has not been verified with the Medical Council authorities. In this background, the appreciation of evidence by the Trial Court and the Lower Appellate Court needs to be re-considered. Hence, this Court is inclined to suspend the sentence of Imprisonment till the disposal of the revision petition.

7.Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the revision petition and the petitioner 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



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two sureties each for a like sum to the satisfaction of the learned Judicial
Magistrate, Omalur.

8.Further, the petitioner shall appear before the Trial Court on the first working day once in three months at 10.30 a.m. until the disposal of the revision petition 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 Miscellaneous Petition is ordered.

05.02.2024

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Note: Issue order copy on 06.02.2024



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To

- 1.The Inspector of Police,
Deevattipatty Police Station,
Salem District.
- 2.The Judicial Magistrate,
Omalur.
- 3.The First Additional District and Sessions Court,
Salem.
- 4.The Superintendent,
Central Prison,
Coimbatore.



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M. NIRMAL KUMAR, J.

cse

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