



Crl.M.P.No.19362 of 2023 in Crl.R.C.No.2133 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2024

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.19362 of 2023
in Crl.R.C.No.2133 of 2023

Gurunathan,
S/o.Venkatesan

... Petitioner

Vs.

The State
Represent by Inspector of Police,
Panruti Police Station,
Panruti, Cuddalore District.
Crime No.267/2016.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 397(1) Cr.P.C., to suspend the sentence passed in CA No.19 of 2020 dated 22.08.2023 on the file of the I Additional District and Sessions Court at Cuddalore in partial modification of the conviction order passed in CC No.103 of 2017 dated 30.11.2020 on the file of the Judicial Magistrate No.I, Panruti, pending disposal of the present revision petition.

For Petitioner : Mr.S.C.Vishwanth

For Respondent : Mr.C.E.Pratap,
Government Advocate (Crl. Side)



ORDER

WEB COPY

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in judgment, dated 22.08.2023 in C.A.No.19 of 2020 on the file of the I Additional District and Sessions Court at Cuddalore in partial modification of the conviction passed by the learned Judicial Magistrate No.I, Panruti in C.C.No.103 of 2017, dated 30.11.2020.

2.The petitioner was charged and tried for offence under Sections 294(b), 324, 326, 427, 506(ii) and 352 of IPC. Similarly, A2 was charged and tried for offence under Section 294(b) of IPC. After conclusion of trial, the trial Court acquitted the petitioner from the charges under Sections 294(b), 427, 352 and 506(ii) of IPC, but convicted him under Section 326 of IPC and sentenced him to undergo one year Simple Imprisonment and to pay a fine of Rs.1,000/- in default to undergo three months Simple Imprisonment. Similarly, A2 was acquitted from the charge under Section 294(b) of IPC. Challenging the conviction and sentence, the petitioner preferred an appeal before the learned I Additional District and Sessions



Judge, Cuddalore in C.A.No.19 of 2020 (lower appellate Court). The lower appellate Court *vide* judgment, dated 22.08.2023 confirmed the sentence imposed for offence under Section 326 of IPC, but modified the sentence to undergo six months Simple Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo two months.

3.The case of the prosecution is that the defacto complainant (PW1) and the petitioner are adjacent agricultural land owners at Vadukapalayam village and both always had dispute with regard to boundaries of their lands. On 24.04.2016, at about 05.30 p.m., the defacto complainant (PW1) and his brother (PW2) found the petitioner along with other accused damaging the ridges of the agricultural land, encroaching the petitioner's land. PW1 and PW2 questioned the petitioner and a wordy altercation arose, the petitioner by using wooden handle of spade attacked PW2 on his forehead, left shoulder and caused contusions. Immediately, he was taken to the Government Hospital, Panruti, from there, he was taken to JIPMER Hospital, Puducherry. On the complaint received, PW8 registered FIR in Crime No.267 of 2016 (Ex.P4), visited scene of occurrence, prepared



observation mahazar (Ex.P6), rough sketch (Ex.P5), recorded the statement of witnesses and the Doctors (PW7 & PW9). On completion of investigation, charge sheet filed before the trial Court against the petitioner and another accused/A2. During trial, on the side of the prosecution, nine witnesses examined as PW1 to PW9 and eight documents marked as Exs.P1 to P8. On the side of the defence, no witness examined and no document marked. On conclusion of trial, the trial Court convicted the petitioner as stated above.

4.The learned counsel for the petitioner submitted that the petitioner was acquitted from the charges under Sections 294(b), 427, 352 and 506(ii) of IPC, but convicted under Section 326 of IPC. The trial Court came to the conclusion that the major of the offence not made out against the petitioner and the evidence of witnesses are unreliable, hence, the same benefit ought to have been extended to the petitioner with regard to the other charge also. PW1 and PW2 admitted that they had some dispute with regard to boundaries of agricultural land with the petitioner, due to which, there was motive. Added to it, there was delay in lodging the complaint. The trial



Court convicted the petitioner under Section 326 of IPC for the reason that PW2 sustained fracture injury, but no X-ray or any medical records produced in this case. Further, no material objects seized or produced. PW3 and PW4 who are relatives of PW1, projected eye witnesses, PW1 and PW2 confirmed that except both, nobody else was in the field at the relevant point of time. He further submitted that A2 in this case was acquitted by the trial Court disbelieving the evidence of the prosecution witnesses and the same benefit ought to have been extended to the petitioner. The medical evidence (PW7 & PW9) does not confirm to the ocular evidence. In this case, PW5 and PW6, the independent witnesses not supported the case of the prosecution. From the complaint (Ex.P1), it is seen that there was interpolation and corrections which confirms the tampering of Ex.P1. Hence, the conviction of the petitioner under Section 326 IPC is not sustainable.

5.The learned Government Advocate (Crl. Side) appearing for the respondent Police filed counter and submitted that the family members of PW1 and the petitioner are at contrary attitude regarding the ownership of



the agricultural land at Vadukapalayam. While so, on 24.04.2016, at about 05.30 p.m., when PW1 and his brother PW2 came to their land, they came to know that the petitioner was in process of readjusting the ridges of the agricultural lands. On seeing, they started abusing with filthy language. PW2 was assaulted by the petitioner by using the wooden handle portion of spade and caused injuries on the forehead as well as to left shoulder. On the complaint (Ex.P1), an FIR (Ex.P4) in Crime No.267 of 2016, for offence under Sections 294(b), 324, 506(ii) of IPC registered on 25.04.2016. Thereafter, the Investigating Officer visited scene of occurrence, prepared observation mahazar (Ex.P6), rough sketch (Ex.P5), recorded the statement of witnesses and the Doctors (PW7 & PW9) and arrested the accused. On completion of investigation, charge sheet filed before the trial Court. During trial, on the side of the prosecution, nine witnesses examined as PW1 to PW9 and eight documents marked as Exs.P1 to P8. Thus, the prosecution proved the case beyond all reasonable doubts and both the Court below accepted the case and imposed punishment. Hence, prays for dismissal.



6.Considering the submissions and on perusal of the materials, it is

seen that the petitioner was tried along with another accused/A2 who was acquitted by the trial Court disbelieving the evidence of the prosecution witnesses. In this case, PW1 and PW2 are adjacent agricultural land owners to the petitioner and some dispute between them with regard to boundaries of the land exist. Due to which, there was motive and chances of exaggeration and implication. Added to it, the complaint (Ex.P1) is with corrections and interpolation. Further, the evidence of PW1 and PW2 are contradictory to the medical evidence (PW7 and PW9). Admittedly, in this case, no x-ray or medical records produced and no weapon used in the alleged attack seized or produced. In view of the same, the conviction of the petitioner under Section 326 of IPC needs reconsideration.

7.In view of the above, this Court is inclined to suspend the sentence of the petitioner till the disposal of the main criminal revision. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the criminal revision and the petitioner is ordered to be enlarged on bail, on condition that he shall execute a bond for



Crl.M.P.No.19362 of 2023 in Crl.R.C.No.2133 of 2023

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.

8.Further, the petitioner shall appear before the Trial Court on the first working day of every English Calendar 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 date of his absence as directed by the Trial Court.

9.Accordingly, this Miscellaneous Petition is ordered.

13.02.2024
(2/2)

vv2



Crl.M.P.No.19362 of 2023 in Crl.R.C.No.2133 of 2023

To

WEB COPY

- 1.The I Additional District and Sessions Judge,
Cuddalore.
- 2.The Judicial Magistrate No.I,
Panruti.
- 3.The Inspector of Police,
Panruti Police Station,
Cuddalore District.
- 4.The Superintendent of Police,
Central Prison, Cuddalore.
- 5.The Public Prosecutor,
High Court, Madras.



WEB COPY



Crl.M.P.No.19362 of 2023 in Crl.R.C.No.2133 of 2023

M. NIRMAL KUMAR., J.

vv2

Crl.M.P.No.19362 of 2023
in Crl.R.C.No.2133 of 2023

13.02.2024
(2/2)