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*Crl.M.P.No.13685 of 2024
in Crl.R.C.No.1649 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2024

CORAM:

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

Crl.M.P.No.13685 of 2024
in
Crl.R.C.No.1649 of 2024

Periyasamy

... Petitioner/Revision Petitioner

Vs.

The State Represented by,
The Sub Inspector of Police,
Mangalapuram Police Station,
Mangalapuram, Namakkal District.

... Respondent/Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of Code of Criminal Procedure, to suspend the sentence imposed in Crl.A.No.74 of 2022 dated 11.09.2024 passed by the learned Principal Sessions Court, Namakkal confirming the judgment in C.C.178 of 2015 dated 21.09.2022 passed by the learned Judicial Magistrate, Rasipuram release the petitioner on bail pending disposal of above Criminal revision and to exempt the petitioner from surrendering before the Lower Court.

For Petitioner : Mr.B.Jawahar

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence imposed in Crl.A.No.74 of 2022 dated 11.09.2024 passed by the learned Principal Sessions Court, Namakkal, confirming the judgment in C.C.178 of 2015 of 2021 dated 21.09.2022 passed by the learned Judicial Magistrate, Rasipuram and release the petitioner on bail pending disposal of above Criminal revision.

2. The petitioner/accused in C.C.No.178 of 2015 was convicted by the trial Court by judgment dated 21.09.2022 for offences under Sections 326 of I.P.C. and the accused is sentenced to undergo simple imprisonment of two months and to pay a fine of Rs.2000/- in default to undergo one week simple imprisonment for the offence under section 326 of IPC. The petitioner was acquitted for the offence under section 294[b]. Aggrieved against the conviction, he preferred an appeal in C.A.No.74 of 2022 before the learned Principal Sessions Court, Namakkal. The learned Sessions Judge, by judgment dated 11.09.2024 confirmed the conviction imposed by the trial Court as against which, he filed a revision before this Court in



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Crl.R.C.No.1649 of 2024 along with the instant miscellaneous petition seeking suspension of sentence.

3. The contention of the petitioner is that the the defacto complainant and P.W.1 are relatives and there is some property dispute between them. Therefore, P.W.1 had picked up quarrel with the petitioner and there were exchange of blows between them, which has been projected as if the petitioner along with his brother and father had attempted to attack P.W.1 on his head. In this case P.W.1 is son P.W.2. P.W.3 to P.W.6 are projected eye witnesses and none of the eye witnesses have supported the version of P.W.1. The trial Court had convicted the petitioner on the basis of the evidence of P.W.1 and P.W.9, the doctor who had treated P.W.1. The trial Court had acquitted the petitioner's brother and father and convicted the petitioner for the offence under section 326 of IPC. The evidence of the doctor is that frontal head injury was found on P.W.1. Even due to roll over between the petitioner and P.W.1 and it is not an intentional attack. The learned counsel appearing for the petitioner further submitted that the petitioner has now surrendered before the trial Court and is now confined in Central Prison, Salem.

4. The learned Additional Public Prosecutor filed his counter stating



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that there was dispute between the accused and P.W.1 and the petitioner along with brother and father, who are A1 and A2 had attacked P.W.1 with Koduval and caused head injury to P.W.1 and the injury is grievous in nature and since, the dispute is within the relatives, P.W.2 has not supported the case of the prosecution. The injury inflicted by the petitioner has been clearly proved by the evidence of Doctor P.W.9. Therefore, trial Court and the appellate Court rightly convicted the accused. Hence, opposed grant of suspension of sentence to the petitioner.

5. During the trial, the trial Court examined P.W.1 to P.W.12 and marked Ex.P.1 to Ex.P.16 and M.O.1 and M.O.2 material objects have been marked. The trial Court on the considering the evidence of the witnesses and documents had convicted the petitioner. The lower appellate Court confirmed the conviction.. As against which the present revision has been filed.

6. A perusal of the evidence of witnesses, it is seen that there is dispute between the family members of the petitioner and P.W.1 with regard to sharing of the property and the occurrence had taken place in the agricultural field and there is exchange of blows between both the parties.



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P.W.2 is son of P.W.1 and P.W.3 to P.W.6 are eye witnesses and they had not supported the case of the prosecution. As per the prosecution case, the petitioner had attacked P.W.1 with koduval M.O.2. But in this case, seizure of M.O.2 has not been properly proved by the prosecution. In view of the above facts and circumstances, the conviction of the petitioner needs reconsideration.

7. Accordingly, substantive sentence of Imprisonment 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.5,000/- (Rupees five 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 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 Criminal Miscellaneous Petition is ordered.



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Index : Yes/No
Internet : Yes/No
Speaking order / Non-speaking order
Neutral citation : Yes/No

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Note Issue Order Copy on 17.10.2024

To

1. The Principal Sessions Judge,
Namakkal.
2. The Judicial Magistrate No.1, Rasipuram.
3. The Inspector of Police,
Mangalapuram Police Station, Mangalapuram,
Namakkal District.
4. The Superintendent of Prison,
Central Prison, Salem.
5. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

VTC

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