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*Crl.M.P.No.17212 of 2023
in Crl.A.No.1214 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2024

CORAM:

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

Crl.M.P.No.17212 of 2023
in
Crl.A.No.1214 of 2023

1.Gopi @ Gopinath
S/o.Palanisamy

2.Sathish Kumar
S/o.Ponnusamy

... Petitioners/Accused

Vs.

1.State rep by
The Deputy Superintendent of Police,
Namakkal Sub Division,
Namakkal District.
Crime No.662/2020.

2.T.Sasikumar

... Respondents

PRAYER: Criminal Miscellaneous Petitions filed under Sections 389(2) & 439 of Cr.P.C to suspend the sentence imposed by the learned Special Judge, Special Court for SC and ST (Prevention of Atrocities) Act, Namakkal on 29.09.2023 in Spl.S.C.No.4 of 2021 and to enlarge the petitioners on bail pending disposal of the above Criminal appeal.



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For Petitioner : Mr.C.Sivakumar

For Respondent-1 : Mr.C.E.Pratap
Government Advocate (Crl. Side)

For Respondent-2 : No appearance

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioners, seeking to suspend the sentence of imprisonment imposed on them in Spl.S.C.No.4 of 2021 by a judgment dated 29.09.2023 passed by the learned Sessions Judge (FAC), Special Court for Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, Namakkal and enlarge the petitioners on bail pending disposal of the above appeal.

2.The petitioners/A1 and A2 in Spl.S.C.No.4 of 2021 were convicted by the Trial Court by judgment dated 29.09.2023 for offence under Sections 341 of I.P.C. r/w Section 3(2)(va) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 (in short 'SC/ST (POA) Amendment Act 2015') and Section 3(1)(r) and 3(1)(s) of SC/ST (POA) Amendment Act 2015 and sentenced them to undergo one month simple imprisonment each for offence under Section 341 of I.P.C. r/w Section



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3(2)(va) of SC/ST (POA) Amendment Act 2015, to undergo two years simple imprisonment each for offence under Section 3(1)(r) of SC/ST (POA) Amendment Act 2015 and to undergo two years simple imprisonment each for offence under Section 3(1)(s) of SC/ST (POA) Amendment Act 2015. All the sentences ordered to run concurrently, against which, the petitioners/accused filed Crl.A.No.1214 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.

3. Notice was served to the second respondent/de-facto complainant. Earlier on 23.11.2023, Mr.M.Subash, learned counsel appeared on behalf of second respondent, sought some time to file his counter. Thereafter, on 16.02.2024, there was no representation for the second respondent. Even today, there is no representation for the second respondent either in person or through his counsel.

4. The case of the prosecution is that the de-facto complainant/PW1 in this case, who is residing at Vagurampatti, Namakkal, is doing his Law graduation in School of Excellence, Tharamani at Chennai. PW6 is his father, PW7 is his mother and PW8 is his wife. During the Covid-19 lock down, he



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came down to his native in the year 2020. The de-facto complainant belongs to Arunthathiyar community. The petitioners herein hail from the same locality, who belong to Kongu Vellalar Community. On 08.05.2020 at about 6.45 p.m. when the de-facto complainant was walking near Parama Gounder's Thottam in Vagurampatty, Namakkal District, the petitioners came in a two wheeler in the opposite direction, enquired the de-facto complainant. The de-facto complainant informed that he is the son of Thangavel. Immediately, the first petitioner stated that 'oh that Thangavel' with caste name. The second petitioner questioned the way the de-facto complainant was dressed, questioned his posting about social leaders and society in the face book and they restrained de-facto complainant from moving further and used abusive words and insulted him with filthy language calling by his caste name. He was assaulted, his Tshirt torn and headphone was removed and damaged. The de-facto complainant sustained injuries.

4.1.The de-facto complainant informed the local Panchayat President about the occurrence and his father took him to Government Hospital, Namakkal, where he was admitted as in-patient. On receipt of information from the Hospital, PW14/Sub Inspector of Police, Namakkal, visited the hospital, recorded statement from the de-facto complainant, registered a case



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in Crime No.662 of 2020 for offence under Sections 294(b), 341, 323, 355, 506(ii) of IPC and Section 3(1)(s), 3(2)(va) of SC/ST (POA) Amendment Act 2015. Thereafter, he submitted a letter to the Superintendent of Police, who nominated Deputy Superintendent of Police to investigate the case. Thereafter, the Deputy Superintendent of Police/PW16 took up investigation, enquired the de-facto complainant, visited scene of occurrence, recorded statement of witnesses, prepared observation mahazar, rough sketch, collected materials and documents and filed charge sheet.

5.During trial, on the side of the prosecution, PW1 to PW16 examined and marked Exs.P1 to P11 and marked M.O.1. 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, had convicted the petitioner as stated above.

6.The contention of the petitioners is that the petitioners are total strangers to the de-facto complainant. The petitioners and de-facto complainant though hail from the same village they do not know each other. Admittedly, the de-facto complainant was staying in Chennai, persuing his



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law course. The complaint against the petitioners is that the de-facto complainant posting some articles in the face book hailing social leaders which was questioned by them. This face book recordings not produced. Further except the de-facto complainant, no other witnesses have stated anything about the petitioners abuse and attack, PW2 and PW3, the projected eyewitnesses not supported the case of the prosecution. PW4, PW5, PW9, PW10 and PW11 are hearsay witnesses. They have not stated anything about the occurrence. Except for the family members of the de-facto complainant, PW6/father, PW7/mother and PW8/wife, none have spoken against the petitioners. PW6 to PW8 admittedly not eyewitnesses to the occurrence. The trial Court though recorded these facts, but convicted the petitioners.

6.1. Likewise in this case the Tshirt, which is said to have been torn by the petitioners, and the damaged headphone not produced. The Doctor, examined as PW11 stated that the injuries are simple in nature which might have occurred due to a fall. The de-facto complainant abused in public place and view not proved. The trial Court failed to consider these facts. He further submitted that the trial Court had already suspended the sentence imposed on the petitioners. Further submitted that the petitioners have arguable points



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and fair chance of success in this appeal. Hence, he prays for granting suspension of sentence to the petitioners.

7.The learned Government Advocate (Crl. Side) on the other hand submitted that in this case on the complaint of de-facto complainant, PW14/Sub Inspector of Police, Namakkal, visited the hospital, where the de-facto complainant admitted as in-patient, recorded statement from him, registered case in Crime No.662 of 2020 for offence under Sections 294(b), 341, 323, 355, 506(ii) of IPC and Section 3(1)(s), 3(2)(va) of SC/ST (POA) Amendment Act 2015. Thereafter, he submitted a letter to the Superintendent of Police, who by a proceedings, nominated PW16/Deputy Superintendent of Police to conduct investigation. Thereafter, PW16 took up investigation, enquired de-facto complainant, visited scene of occurrence, recorded statement of witnesses, prepared observation mahazar, rough sketch, collected materials and documents and filed charge sheet. In this case, PW1 to PW16 examined and marked Exs.P1 to P11 and marked material object as M.O.1. He further submitted that the Trial Court on considering the evidence and materials had rightly convicted the petitioners. He further submitted that the trial Court had already suspended the sentence imposed on the



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petitioners, and prayed for dismissal of the petition.

8.Considering the submissions made and on perusal of the materials available on record, it is seen that in this case except PW1 and his parents and his wife, who were examined as PW6, PW7 and PW8, no other witnesses spoken about the occurrence. The eyewitnesses to the occurrence, namely, PW2 and PW3 not supported the case of the prosecution. The Tshirt and damaged headphones not produced. The trial Court though recorded the same, convicted the petitioners which needs reassessment and reconsideration. The sentence imposed on the petitioners already suspended by the trial Court. Further taking note of the fact that there are arguable points involved in this appeal and it would take some time for the appeal to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioners.

9.Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal Appeal:

(a) The petitioners/accused are ordered to be enlarged on bail, on condition that they shall



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execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only) each, with two sureties, each for a like sum to the satisfaction of the learned Special Judge, Special Court for Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, Namakkal.

(b) The petitioners/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Judge may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioners 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 appeal and if they are not able to appear before the Trial Court on that day, they 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 their absence as directed by the Trial Court.

10. Accordingly, this Criminal Miscellaneous Petition is ordered.



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22.02.2024
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To

- 1.The Deputy Superintendent of Police,
Namakkal Sub Division,
Namakkal District.
- 2.The Sessions Judge (FAC),
Special Court for Scheduled Caste and Scheduled Tribes
(Prevention of Atrocities) Act,
Namakkal.
- 3.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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