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*Crl.M.P.No.14934 of 2024
in Crl.RC.No.1816 of 2024*

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.10.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.14934 of 2024

in

Crl.RC.No.1816 of 2024

Vediyappan

... Petitioner

Vs.

State Represented by
The Sub-Inspector of Police,
Mathikonpalayam,
Dharmapuri District.

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 397(1) of Cr.P.C., 438(1) of BNSS, to suspend the sentence confirmed by the learned Additional District and Sessions Judge, Dharmapuri in Crl.A.No.38 of 2023 dated 03.04.2024 which confirmed the judgment of the Judicial Magistrate, Additional Mahila Court, Dharmapuri by judgment in C.C.No.215 of 2018 dated 19.08.2023.



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For Petitioner : Mr.J.Solomon
For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

The petitioner/accused in C.C.No.215 of 2018 was convicted by the Trial Court by judgment dated 19.08.2023 and sentenced to undergo one month simple imprisonment and to pay a fine of Rs.100/-, in default, to undergo one week simple imprisonment for the offence under Section 326 IPC, to undergo two years simple imprisonment and to pay a fine of Rs.2,000/-, in default, to undergo one month simple imprisonment and to pay a compensation of Rs.50,000/- to P.W.1 within three months from the date of judgment, in default, to undergo six weeks simple imprisonment. Aggrieved against the same, the petitioner preferred an appeal in Crl.A.No.38 of 2023. The Sessions Court by judgment dated 03.04.2024 dismissed the appeal confirming the conviction and sentence imposed by the Trial Court. Against which, the present petition filed.



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2.The petitioner and the defacto complainant are neighbours and there was brewing enmity between both the family for the past seven years in drawing water from the common well. On 05.04.2018 at about 6.00 p.m., when the defacto complainant after watering the crops was standing near the land, the petitioner along with his wife/A2 said to have come there and assaulted her using the iron rod. P.W.3 who came there rescued the injured and took her to the Government Hospital, Dharmapuri. Thereafter, information was sent to the respondent police from the Hospital. On receipt of the information, the respondent police had come there, recorded the statement of witnesses and the case registered.

3.The contention of the learned counsel for the petitioner is that there was some dispute in drawing of water from the common well. P.W.1 is the only witness who states about the petitioner, his wife attacked her using the iron rod/M.O.1 but she had not stated about the specific overtact against the petitioner, only says that she was attacked by the petitioner and his wife. The evidence of P.W.2 is in the nature of hearsay witness. The evidence of P.W.3 is that the husband of P.W.1 informed through phone about the



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assault and thereafter took the injured to the hospital. P.W.5/Settu, husband of the defacto complainant does not specifically state as to how he got information about the assault on the defacto complainant. Further, P.W.5 admits that there was dispute in drawing of water from the common well. He would submit that since there was a dispute, the petitioner has been falsely implicated in this case. He would further submit that the injuries sustained by P.W.1/defacto complainant are laceration in nature confirming that it might be due to fall. Likewise, fracture in the left elbow and right ankle might be due to slip and fall. He further submitted that P.W.9 admits that such injury is possible due to fall. He would submit that there is likelihood of false implication of the petitioner which fact not considered by both the Courts below.

4.The learned Additional Public Prosecutor submitted that on receipt of information from the hospital, P.W.10 went to the Hospital, recorded the statement of P.W.1 and received the complaint. P.W.11/Sub-Inspector of Police registered a case in Crime No.71 of 2018, proceeded to the scene of occurrence, prepared observation mahazar and rough sketch, enquired the



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witnesses present in the scene of occurrence and recovered the material objects. On completion of investigation, charge sheet filed before the Trial Court. During the Trial, P.W.1 to P.W.11 examined, Ex.P1 to Ex.P8 marked and M.O.1 produced on the side of the prosecution and on the side of the defence, no witness examined and no documents marked. On conclusion of trial, the Trial Court convicted the petitioner as stated above which was confirmed by the Lower Appellate Court. He would submit that on the evidence of the injured/P.W.1 corroborated with the medical evidence of P.W.8 and P.W.9 and Ex.P4, the Trial Court had rightly convicted the petitioner. It is admitted by the petitioner that there is a dispute and enmity prevailing between the petitioner and the defacto complainant in drawing of water from the common well. Therefore, both the Courts below had rightly convicted the petitioner. Hence, prayed for dismissal.

5.Considering the submissions made and on perusal of the materials, it is seen that there is a dispute between the petitioner, his wife with P.W.1 and P.W.5 in drawing of water from the common well. Except for P.W.1, no other witness spoken about the occurrence proper. P.W.1 not specifically



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state the overtact against the petitioner. The seizure of M.O.1 is doubtful.

Further, how P.W.3 had come to the scene of occurrence and took the injured to the Hospital doubtful. The injuries sustained spoken by the Doctors P.W.8 and P.W.9 and they confirm injuries are possible during a fall in the field. Hence, this Court finds that the conviction and sentence imposed by the Trial Court confirmed by the Lower Appellate Court needs re-consideration.

6.In view of the above, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the revision petition and he 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 two sureties, each for a like sum to the satisfaction of the trial Court.

7.Further, the petitioner shall appear before the Trial Court on the first working day of once in three months 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



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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. Accordingly, this Miscellaneous Petition is ordered.

25.10.2024

cse

Note: Issue order copy on 25.10.2024

To

- 1.The Sub-Inspector of Police,
Mathikonpalayam, Dharmapuri District.
- 2.The Additional District and Sessions Judge,
Dharmapuri.
- 3.The Judicial Magistrate,
Additional Mahila Court, Dharmapuri.
- 4.The Superintendent,
Central Prison, Salem.
- 5.The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR., J.

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