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Crl.M.P.No.15155 of 2024
in
Crl.A.No.1330 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.15155 of 2024

in

Crl.A.No.1330 of 2024

Vadivel @ Singaravadivel
S/o.Muthukrishnan

... Petitioner/A6

Vs.

The State Rep. by
The Inspector of Police,
Sirkali Police Station.
Mayiladuthurai District.
Crime No.649 of 2015

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 430 of Bharatiya Nagarik Suraksha Sanhita, 2023, praying to suspend the sentence imposed on the petitioner in S.C.No.63 of 2023 dated 15.10.2024 on the file of the District and Sessions Judge, Mayiladuthurai and enlarge the petitioner on bail pending disposal of the above Criminal Appeal in pursuance to the Crime No.649 of 2015 on the file of the respondent.

For Petitioner : Mr.J.Jawahar

For Respondent : Mr.R.Vinothraja
Government Advocate (Crl.Side)



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner seeking to suspend the sentence imposed in S.C.No.63 of 2023 passed by the learned District and Sessions Judge, Mayiladuthurai by a judgment dated 15.10.2024 and enlarge the petitioner on bail pending disposal of the above criminal appeal.

2.The petitioner/A6 was convicted by the trial Court in S.C.No.63 of 2023 by judgment dated 15.10.2024 and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month rigorous imprisonment for offence under Section 148 of I.P.C. and five years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month rigorous imprisonment for offence under Section 3(1) TNPPDL Act. Aggrieved against the conviction, the petitioner preferred an appeal in Crl.A.No.1330 of 2024 before this Court along with petition seeking suspension of sentence and bail.

3. The contention of the petitioner/A6 is that a civil case has been given



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a criminal colour, the petitioner has been falsely prosecuted and convicted by the trial Court. Even in the civil case in O.S.No.154 of 2015 before the District Munsif Court, Sirkali, the de-facto complainant had failed. The de-facto complainant is not the owner of the property. Originally, the property belongs to Singarathopu Sattanathar Kovil Matrum Dharmapura Adeenam. However, the said Adeenam is the complainant in this case.

4. The further contention of the petitioner is that the petitioner herein is the resident of the area. On 16.08.2015 at 8.30 p.m., the de-facto complainant/P.W.1 placed some concrete structures obstructing the pathway used by the petitioner and others. Hence, the petitioner and other accused have assembled and requested P.W.1 not to construct compound wall and that they had removed the obstruction which has been projected as damages caused to the public property. During the removal of the pathway, there was a wordy quarrel and scuffle between the accused persons and the de-facto complainant and that the de-facto complainant sustained injuries and taken to the Government Hospital, Sirkali for treatment and information also sent to the respondent/Police and a case has been registered against the petitioner and other accused.



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5. On receipt of the information, the respondent/police lodged a case against the petitioner and others. The injuries sustained by the de-facto complainant are simple in nature. The trial Court had convicted and sentenced the petitioner as stated above. Further, M.O.1 to M.O.5 in this case are Spade, Crow Bar, Iron Road, Wooden log and Broken Cement Concrete, which are all commonly used in construction work and for removal of any structures which cannot be stated to be deadly weapons, used by the petitioner to attack the de-facto complainant. In this case, P.W.1 to P.W.3 are projected as injured witnesses and their evidences are contradictory to each other. Further, a civil dispute led to a wordy quarrel and exchange of words. However, the trial Court failed to consider that a civil suit in O.S.No.154 of 2015 filed by the de-facto complainant against the petitioner and others is dismissed. The appeal filed against the dismissal was also not entertained. In such circumstances conviction of the petitioner is not proper and that, the de-facto complainant is not a owner of the said property.

6. Learned Government Advocate (Crl.Side) by referring to the counter affidavits, submitted that the de-facto complainant had lodged a complaint



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stating that on 16.08.2015 at about 8.30 p.m. P.W.1 to P.W.3 were standing in front of the hut in which Pannerselvam is residing and spoken with each other. Due to that enmity, all the accused have formed an unlawful assembly armed with deadly weapons and have trespassed into the property of the de-facto complainant and destructed the compound wall. When the same was questioned, there was abuse threatening and they have also attacked them with Spade handle and iron road and other instruments with them. The injured was taken to the Government Hospital, Sirkali. Thereafter, P.W.8, who received the complaint and registered the F.I.R and P.W.9 took up investigation and visited the scene of occurrence and prepared Observation Mahazar and Rough Sketch in the presence of witnesses and also examined the witnesses and recorded their statements and arrested the accused. Further M.O.1 to M.O.5 recovered. P.W.9 took up further investigation and on conclusion of the investigation, charge sheet was filed before the trial Court.

7. During the trial, on the side of the prosecution P.W.1 to P.W.9 were examined and marked Ex.P.1 to Ex.P.13. On the side of accused, D.W.1 was examined. Material objects were marked as M.O.1 to M.O.5. On conclusion of the trial, the trial Court convicted and sentenced the petitioner as stated above.



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8. Considering the submissions made on either side and on a perusal of the materials available on record, it is seen that there is a civil dispute between the petitioner and the de-facto complainant and others. The case is that, a common pathway obstructed by placing concrete structure, which was requested by the petitioner and other accused earlier, to be removed, but the de-facto complainant failed to do so, thereafter for having the pathway the concrete structure was removed, due to which there was a wordy altercation and exchange of words. Admittedly, the property belongs to Singarathopu Sattanathar Koil Matrum Dharmapura Adeenam and none from Adeenam has been examined. It is seen that a civil suit between the de-facto complainant and some of the accused came to be dismissed. Primarily the civil dispute got magnified and a criminal case filed. In any event, the conviction of the petitioner needs to be re-considered.

9. Accordingly, the substantive sentence of imprisonment imposed on the petitioner alone is suspended till the disposal of the above criminal appeal and the petitioner is ordered to be enlarged on bail, on condition that the petitioner shall execute a bond for a sum of Rs.5,000/- (Rupees Five thousand



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only) with two sureties, each for a like sum to the satisfaction of the trial Court.

10. Further, the petitioner/A6 shall appear before the Trial Court once in three months on the first working day of a month at 10.30 a.m. until the disposal of the above Criminal Appeal and if he is not able to appear before the Trial Court on that day, he shall make necessary arrangements to file an application under Section 317 Cr.P.C. and shall appear before the Trial Court on any other day in the same month, in lieu of the date of his absence as directed by the Trial Court.



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M.NIRMAL KUMAR, J.

rsi

11. Accordingly, this Criminal Miscellaneous Petition is ordered.

29.10.2024
(2/2)

rsi

Note : Issue Order Copy on 29.10.2024.

To

- 1.The District and Sessions Judge,
Mayiladuthurai.
2. The Superintendent,
Central Prison
Thiruchirapalli.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Inspector of Police,
Sirkali Police Station.
Mayiladuthurai District.

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