



*Crl.M.P.No.18880 of 2023
in Crl.A.No.1408 of 2023*

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Orders Reserved On 12.02.2024	Orders Pronounced On 19.02.2024
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M. NIRMAL KUMAR, J.

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned XXI Additional Sessions Judge, City Civil Court at Allikulam, Chennai by judgment dated 15.11.2023 made in S.C.No.311 of 2021 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/accused was convicted by the Trial Court in S.C.No.311 of 2021 for the offences under Sections 279 and 304(ii) IPC and Section 185 of Motor Vehicles Act and sentenced him to pay a fine of Rs.1,000/-, in default to undergo three months simple imprisonment for the offence under Section 279 IPC, to undergo five years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo six



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months simple imprisonment for the offence under Section 304(ii) and to pay a fine of Rs.2,000/-, in default to undergo three months simple imprisonment for the offence under Section 185 of Motor Vehicles Act. Against which, the present appeal is filed along with suspension of sentence.

3.The case of the prosecution is that on 26.01.2018 at about 2.00 a.m., the petitioner/accused under the influence of alcohol was driving a Honda City Car bearing registration No.TN-07-CH-5359 at Rajiv Gandhi road from North to South opposite to Tharamani Balamurugan Koil in a rash and negligent manner and hit the two wheeler bearing registration No.TN-07-BU-3678. The rider of the two wheeler was thrown away on the road and dragged for few meters, due to which he sustained injuries on his head, face, abdomen and chest. Immediately, ambulance was called by the onlookers and the injured was taken to Global Hospital where he took treatment for three days and for specialized treatment he was shifted to Rajiv Gandhi Government Hospital and later, the injured succumbed to injuries on 04.02.2018 at 3.30 p.m. P.W.14 visited the hospital, received



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the complaint, registered the FIR, visited the scene of occurrence, prepared observation mahazar and rough sketch in the presence of witnesses and recorded the statement of witnesses. P.W.2 and P.W.5 are the eye witnesses to the occurrence. The petitioner/accused who was detained by the onlookers in the scene of occurrence, was produced before P.W.10/Doctor attached to Government Hospital, Saidapet, who had given the Drunkness Certificate/Ex.P10. Thereafter, the petitioner was produced before P.W.9/Sub-Inspector, Traffic Enforcement Wing who conducted breath analyser test and confirms that the petitioner was under the influence of alcohol. The vehicles were sent to Motor Vehicle Inspectors/P.W.11 and P.W.13, who inspected the car and bike. On the death of the rider of the bike, inquest conducted, body was sent for Postmortem and thereafter, handed over to P.W.1. On completion of investigation, charge sheet filed before the Trial Court.

4.Before the Trial Court, on the side of the prosecution P.W.1 to P.W.15 were examined and Ex.P1 to Ex.P17 were marked. On the side of the petitioner/accused, no witnesses examined and no exhibits marked. On



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conclusion of the trial, the Trial Court convicted the petitioner as stated above.

5.The contention of the learned counsel for the petitioner is that it is the petitioner who took the injured to the hospital and the accident occurred due to the contributory negligence of the rider of the bike. Further, the presence of P.W.2 and P.W.5 are highly doubtful. P.W.5 not supported the case of the prosecution. P.W.2 is a classmate and close friend of the deceased, he is an interested witness and hence, his presence in the scene of occurrence at that point of time is highly doubtful. He further submitted that the occurrence is said to have taken place at 2.00 a.m., the injured was rushed to Global Hospital at 2.30 a.m., Accident Register given by the Global Hospital confirms the same, FIR came to be registered at about 5.30 a.m. and if that being so, the petitioner was produced before P.W.9 at about 4.00 a.m. and before P.W.10 at 5.00 a.m. is well before the registration of the case and hence, it is doubtful. He would further submit that in Ex.P10/Drunkness Certificate issued by P.W.10, it is recorded that the petitioner consumed liquor but he is not under its influence. P.W.12,



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who is the uncle of the accused, states that on 26.01.2018 he was called to the Guindy Traffic Investigation Police and the petitioner was permitted to go along with him. He further submitted that Ex.P9/Breath Analyser Test Report and Ex.P10/Drunkness Certificate are highly doubtful, unreliable. Further, once the drunkness has not been proved, utmost it is to be treated as offence under Section 304(A) IPC and not under Section 304(ii) IPC. Therefore, the Trial Court had completely misread the evidence and without proper appreciation, had convicted the petitioner. Hence, he prayed for suspension of sentence.

6.The learned Government Advocate (Crl. Side) filed a counter affidavit and submitted that on 26.01.2018 the petitioner who was under the influence of alcohol drove the car in a rash and negligent manner and dashed against the two wheeler, as a result of which, the rider of bike sustained injuries on his head, abdomen and chest. The injured was immediately taken to Global Hospital, thereafter he was referred to Rajiv Gandhi Government Hospital and later, he succumbed to injuries. On receipt of the complaint/Ex.P1, P.W.14 registered the FIR/Ex.P13.



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Thereafter, P.W.15 took up the investigation, visited the scene of occurrence, prepared observation mahazar and rough sketch in the presence of witnesses, examined the witnesses and recorded their statements. P.W.2 and P.W.5 are the eye witnesses to the accident, who clearly state about the manner in which the accident occurred. He would submit that the petitioner was produced before P.W.9/Inspector of Police, Traffic Enforcement, Velachery conducted breath analyser test and issued Ex.P9/Breath Analyser Test report by confirming that the petitioner has consumed alcohol. P.W.10/Doctor also confirms that the petitioner has consumed liquor and issued Drunkness certificate/Ex.P10. P.W.11 and P.W.13, Motor Vehicle Inspectors inspected the vehicles and issued Ex.P11 and Ex.P12. He further submitted that the Trial Court had rightly considered all these aspects and by a well reasoned judgment had convicted the petitioner. Hence, prayed for dismissal of the petition.

7.Considering the submissions made and on perusal of the materials, it is seen that in this case P.W.2 and P.W.5 are the eye witnesses to the occurrence. P.W.2 was following the victim who was proceeding in his



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bike and also the car driven by the petitioner. He had clearly stated about the manner in which the accident occurred. P.W.5 who came in the opposite direction had witnessed the accident and he had clearly narrated as to what he has witnessed except for identifying the petitioner, for which alone, he was treated hostile. Hence, the evidence of P.W.2 and P.W.5 confirms the manner in which the accident occurred. Further the victim and his bike got entangled in the car and dragged for 50 meters as spoken to by them. The medical records and the Casaulty Doctor confirmed that the nature of injury must be due to accident and also dragging of the body in the road. The rider of the bike was on the left side of the road and there is no reason for the petitioner to cause accident but for his rash driving and negligence, the accident occurred. P.W.11/Motor Vehicle Inspector in his report/Ex.P11 had given the details about the damage caused to the vehicle and it is seent hat the left wind screen was broken and the front air bags [both right and left] of the car was opened which would confirm the speed and velocity of the car. Now coming to the drunken state of the petitioner, the evidence of P.W.9, Ex.P9 and Ex.P10 would confirm the same. The signature of the petitioner is available in Ex.P9 and it is common at that



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point of time that the Breath Analyser was only available with the Traffic Enforcement Police and hence, the petitioner was taken to P.W.9. P.W.10/Doctor, Government Hospital, Saidapet issued the Drunkness Certificate/EX.P10 and it is confirmed that the petitioner was in a drunken state. Further, the submission of the petitioner that he took the victim to the Global Hospital is incorrect and in Ex.P3 and Ex.P4, it is clearly recorded that the injured was brought by Government Ambulance. P.W.2 and P.W.5, who are the eye witnesses states that the petitioner was detained by the onlookers near the scene of occurrence and thereafter, P.W.14 entrusted the petitioner to Pandiaraj, Sub-Inspector to be produced before P.W.9 and P.W.10. The petitioner admits that he is present in the scene of occurrence and his only contention is that he was not in a drunken state which is not acceptable and it is contrary to the evidence of P.W.9 and P.W.10. The impact of the accident is proved by P.W.11 and Ex.P11. The Investigating Officer/P.W.15 clarified that after getting information of the death of the deceased, section was altered and thereafter only on 05.02.2018 P.W.12 produced the petitioner. It is to be seen that P.W.1 is an Auto Driver who educated his son in an Engineering College, at the time of death his son was



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employed in Amazon, a Multinational Company and the entire family was looking for the blossom but the bud was nipped. In view of the same, this Court is not inclined to grant suspension of sentence.

8. Accordingly, this Miscellaneous Petition stands dismissed.

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Pre-delivery order made in

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