



*Crl.M.P.No.19606 of 2023
in Crl.RC.No.2168 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.03.2024

CORAM:

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

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in
Crl.RC.No.2168 of 2023

Arumugam

... Petitioner

Vs.

State rep. by
The Inspector of Police,
Selvapuram Police Station,
Coimbatore.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 397(1) of Cr.P.C to suspend the sentence of imprisonment imposed on the petitioner in S.C.No.202 of 2018 by an order dated 12.12.2022 on the file of I Additional Assistant Sessions Judge, Coimbatore and modified in Criminal Appeal No.29 of 2023 on the file of the III Additional District and Sessions Judge, Coimbatore by a judgment dated 11.09.2023 and release the petitioner on bail pending disposal of the criminal revision.



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For Petitioner : Mr.K.Balasubramaniam
For Respondent : Mr.R.Kishore Kumar
Government Advocate [Crl. Side]

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner to suspend the sentence of imprisonment imposed in the judgment dated 11.09.2023 made in C.A.No.29 of 2023 on the file of the III Additional District and Sessions Judge, Coimbatore modifying the judgment dated 12.12.2022 made in S.C.No.202 of 2018 on the file of the learned I Additional Assistant Sessions Judge, Coimbatore and enlarge the petitioner on bail pending disposal of the above revision petition.

2.The petitioner was convicted by the Trial Court by judgment dated 12.12.2022 in S.C.No.202 of 2018 and sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo two years simple imprisonment for the offence under Section 307 IPC. Against which, the petitioner preferred an appeal before the Sessions Court in C.A.No.29 of 2023 and the learned III Additional District and Sessions



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Judge, Coimbatore allowed the appeal in part by judgment dated 11.09.2023 modifying the conviction and sentence passed by the Trial Court by convicting the petitioner for the offence under Section 308 IPC and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default to undergo six months simple imprisonment. Against which, the present revision is filed.

3.The contention of the learned counsel for the petitioner is that the petitioner is an handicapped person having no thumb finger and a person without thumb finger cannot hold M.O.1. He would submit that P.W.7/Doctor who treated P.W.1/injured when confronted with M.O.1, admitted that if a person is stabbing using the handle part, such stab injury is possible. In this case, M.O.1 is without handle, in view of the same the petitioner holding the handle and stabbing P.W.1 is not possible. Further, the details of injury is not completely recorded. P.W.7 is admittedly the Casualty Doctor and the Doctor who treated P.W.1 from 15.11.2017 to 04.12.2017 not examined and no corresponding medical records produced. P.W.1 gives an exaggerated version as could be seen from the evidence of other witnesses present in the scene of occurrence, namely, P.W.2 and



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P.W.3. The Trial Court convicted the petitioner under Section 307 IPC sentencing him to undergo seven years imprisonment but the Sessions Court modified the conviction of the petitioner from Section 307 IPC to Section 308 IPC and sentenced three years imprisonment. He further submitted that in this case except for Accident Register no other medical records produced. Hence, the conviction of the petitioner is not sustainable.

4.The learned Government Advocate [Crl. Side] filed a counter and submitted that on 15.11.2017 at about 22.00 hours, the respondent police received intimation from the CMC Hospital, Coimbatore. On receipt of information, the respondent police rushed to the Hospital and P.W.1/defacto complainant, who is taking treatment as inpatient, stated that due to previous enmity the petitioner/accused with an intention to kill the defacto complainant, stabbed him in his stomach with knife and fled away from the scene of occurrence. P.W.4 took the defacto complainant and admitted him in CMC Hospital, Coimbatore. Hence, complaint was lodged. Based on the complaint, P.W.9 registered FIR/Ex.P7 in Crime No.1380 of 2017 for the offence under Section 307 IPC. P.W.10 took up the investigation, visited the scene of occurrence, prepared observation mahazar/Ex.P2 and rough



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sketch/Ex.P9, examined the witnesses and recorded their statements.

P.W.7/Doctor was examined, who issued medical certificate/Ex.P4. During the course of investigation, the petitioner/accused was arrested and confession statement recorded. Based on his confession, M.O.1 was seized. On completion of investigation, charge sheet filed. During the trial, on the side of the prosecution P.W.1 to P.W.11 examined, Ex.P1 to Ex.P8 and M.O.1 marked. On the side of the defence, no witnesses examined and no exhibits marked. On conclusion of trial, the trial Court convicted the petitioner as stated above. The Lower Appellate Court allowed the appeal in part preferred by the petitioner by modifying the judgment of the Trial Court. Hence, prays for dismissal.

5.Considering the submissions made and on perusal of the materials, it is seen that the petitioner is an handicapped person without thumb finger in his right arm which was amputated and the disability certificate was also produced. The specific stand of the petitioner is that the petitioner is without right thumb finger and he could not have caused the injury to the defacto complainant. P.W.7 when confronted with M.O.1, admitted that such a stab injury would be possible only if a person is stabbing using the handle.



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Further, the Lower Appellate Court finding that the conviction of the Trial Court is doubtful, modified the conviction. In view of the same, the conviction of the petitioner needs re-look and re-consideration. Hence, this Court is inclined to suspend the sentence of Imprisonment till the disposal of the revision petition.

6. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the revision petition and the petitioner 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 learned I Additional Assistant Sessions Judge, Coimbatore.

7. Further, the petitioner shall appear before the Trial Court on the first working day once in three months at 10.30 a.m. until the disposal of the revision petition 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.



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8. Accordingly, this Miscellaneous Petition is ordered.

01.03.2024

cse

To

1. The Inspector of Police,
Selvapuram Police Station,
Coimbatore.
2. The I Additional Assistant Sessions Judge,
Coimbatore.
3. The III Additional District and Sessions Judge,
Coimbatore
4. The Superintendent,
Central Prison,
Coimbatore.



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M. NIRMAL KUMAR, J.

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