



*Crl.M.P.No.2423 of 2024
in Crl.R.C.No.259 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.10.2024

CORAM:

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

Crl.M.P.No.2423 of 2024
in
Crl.R.C.No.259 of 2024

Rizwan

... Petitioner/Revision Petitioner

Vs.

The State Represented by,
The Inspector of Police,
Ranipet Police Station,
Vellore District.
Crime No.399 of 2018

... Respondent/Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of Code of Criminal Procedure, to suspend the sentence imposed in Crl.A.No.111 of 2023 dated 02.12.2023 passed by the learned II Additional District and Sessions Judge, Vellore @ Ranipet confirming the judgment in C.C.70 of 2021 dated 26.06.2023 passed by the learned District Munsif cum Judicial Magistrate, Ranipet release the petitioner on bail pending disposal of above Criminal revision and to exempt the petitioner from surrendering before the Lower Court.



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For Petitioner : Mr.M.S.Niranjhan
for Mr.D.Thirumoorthy

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence imposed in Crl.A.No.111 of 2023 dated 02.12.2023 passed by the learned II Additional District and Sessions Judge, Vellore @ Ranipet, Vellore District confirming the judgment in C.C.70 of 2021 of 2021 dated 26.06.2023 passed by the learned District Munsif cum Judicial Magistrate, Ranipet and release the petitioner on bail pending disposal of above Criminal revision.

2. The petitioner/accused in C.C.No.70 of 2021 was convicted by the trial Court by judgment dated 26.06.2023 for offences under Sections 279, 338 [two counts] and 304[A] of I.P.C., the accused is sentenced to undergo imprisonment of six months for the offence under section 304[A] IPC and accused is sentenced to pay a fine of Rs.2000/- for the offence under 338 IPC [two counts] in default to undergo simple imprisonment for three months.

Aggrieved against the conviction, he preferred an appeal in C.A.No.111 of



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2023 before the learned II Additional District and Sessions Judge, Vellore @ Ranipet. The learned Sessions Judge, by judgment dated 02.12.2023 confirmed the conviction imposed by the trial Court as against which, he filed a revision before this Court in Crl.R.C.No.259 of 2024 along with the instant miscellaneous petition seeking suspension of sentence. The learned counsel appearing for the petitioner further submitted that the petitioner is now surrendered before the trial Court and is now confined in Central Prison, Vellore.

3. The contention of the petitioner is that the P.W.1 and P.W.2 projected the case as if the injured were driving behind the motor cycle driven by the deceased Baskar. It is the further contention of the petitioner is that the defacto complainant is the injured and there are major contradictions in the evidence of P.W.1 to P.W.3 and P.W.2 and P.W.3 are related to the deceased Baskar. It is his further contention that there is no other evidence to show that the petitioner has driven the vehicle in a rash and negligent manner. Further as per the Observation Mahazar and Rough Sketch, bike was driven by the deceased Baskar had come in the opposite direction in the wrong side of the road and the caused accident and the petitioner is not at fault. It is their further contention that neither the Motor Vehicle Inspector



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nor the doctors who had conducted postmortem and treated the injured witnesses have not been examined as witness before the trial Court. The motor vehicle inspection reports Ex.P.8 to Ex.P.10 and the medical reports Ex.P.11 to Ex.P.13 and the postmortem certificate Ex.P.14 have been marked through the investigating officer and the same cannot be considered as a proof in the manner known to law. Hence, the conviction imposed on the petitioner is not sustainable.

4. The learned Additional Public Prosecutor filed his counter stating that on 31.08.2024 at 8.00 hours, the Sub Inspector of Police who was attached to the respondent received an intimation from SMH Hospital, enquired the defacto complainant, who was taking treatment as in patient. P.W.1 is working as a machine operator in SIPCOT, Ranipet. In the complaint, P.W.1 has stated that while he was travelling in his two wheeler Hero Honda Splendor bearing registration No.TN 73 B 3954 and P.W.2 was pillion rider and at about 5.45 a.m., when the bike driven by the deceased was proceeding in front of them, the carriage vehicle driven by the accused came in the opposite direction and hit the bike driven by the deceased and the rider of the bike was thrown away and the defacto complainant and the pillion rider had also sustained injuries and there were rushed to the hospital.



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Thereafter, after registering the First Information Report, the investigating officer took up the investigation, went to the scene of occurrence and prepared observation mahazar and drew rough sketch in the presence of P.W.5 and P.W.6. The investigating officer produced the vehicle before the motor vehicle inspector for inspection and after receipt of the Postmortem Certificate and motor vehicle inspection report and on completion of investigation, filed the final report before the trial Court. The trial Court and the appellate Court considering the evidence of witnesses and the documents rightly convicted the accused. Hence, opposed grant of suspension of sentence to the petitioner.

5. During the trial, the trial Court examined P.W.1 to P.W.7 and marked Ex.P.1 to Ex.P.15 marked, The trial Court on the considering the evidence of the witnesses and documents had convicted the petitioner. The lower appellate Court confirmed the conviction. As against which the present revision has been filed.

6. A perusal of the evidence of witnesses, it is seen that it is the specific case of the P.W.1 that the carriage vehicle was driven by one Viswas and he had driven the vehicle in a rash and negligent manner and dashed



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against the motor cycle driven by the deceased. But the said Viswas was neither arrayed as an accused nor examined as a witnesses. As per the Observation Mahazar and Rough Sketch, bike driven by the deceased Baskar had come in the opposite direction and it was hit by the carriage vehicle. Further the Motor Vehicle Inspector nor the doctors who had conducted postmortem and treated the injured witnesses have not been examined as witnessed before the trial Court. All these facts have not been considered by the Courts below. Further, the petitioner has now surrendered before the trial Court and is now confined in Central Prison, Vellore. In view of the above facts and circumstances, the conviction of the petitioner needs reconsideration.

7. Accordingly, substantive sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the revision and he is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.5,000/- (Rupees five thousand only) with two sureties, each for a like sum to the satisfaction of the trial Court.

8. Further, the petitioner 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



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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 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.

9. Accordingly, this Criminal Miscellaneous Petition is ordered.

15.10.2024

Index : Yes/No
Internet : Yes/No
Speaking order / Non-speaking order
Neutral citation : Yes/No

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Note Issue Order Copy on 17.10.2024

To

1. The II Additional District and Sessions Judge,
Vellore @ Ranipet
2. The District Munsif cum Judicial Magistrate No.1, Ranipet.
3. The Inspector of Police,
Ranipet Police Station, Vellore District.
4. The Superintendent of Prison,
Central Prison, Vellore.
5. The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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