



*Crl.M.P.No.814 of 2024
in Crl.R.C.No.97 of 2024*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2024

CORAM:

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

Crl.M.P.No.814 of 2024
in
Crl.R.C.No.97 of 2024

B.Uthiraraj
S/o.Bagavathiappan

... Petitioner/Accused

Vs.

State rep. by
The Inspector of Police,
Anamalai East Police Station,
Pollachi, Coimbatore District.
(Crime No.156/2015)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) of Cr.P.C to suspend the sentence passed in the judgment dated 02.06.2023 in C.A.No.1 of 2022 on the file of I Additional District and Sessions Court, Coimbatore for convicting the petitioner by confirming the judgment dated 13.12.2021 passed in S.C.No.242 of 2015 on the file of the Assistant Sessions Judge, Pollachi, Coimbatore.

For Petitioner : Mr.K.Vasanthanayagan

For Respondent : Mr.S.Raja Kumar
Additional Public Prosecutor



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ORDER

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This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence of imprisonment imposed on him in S.C.No.242 of 2015 by a judgment dated 13.12.2021 passed by the learned Assistant Sessions Judge, Pollachi, Coimbatore and confirmed by the learned I Additional District and Sessions Judge, Coimbatore made in C.A.No.1 of 2022 dated 02.06.2023 and enlarge the petitioner on bail pending disposal of the above revision.

2.The petitioner was convicted by the trial Court in S.C.No.242 of 2015 by judgment dated 13.12.2021 and sentenced to undergo three years simple imprisonment (2 counts) and to pay a fine of Rs.1,000/- for offence under Section 324 of IPC in default to undergo six months simple imprisonment (2 counts). The sentences are directed to run concurrently. Against which, the petitioner preferred an appeal before the learned I Additional District and Sessions Judge, Coimbatore in C.A.No.1 of 2022 and the learned Sessions Judge, Coimbatore dismissed the appeal by judgment dated 02.06.2023 and the conviction and sentence passed by the Trial Court is modified as the petitioner to undergo three years simple



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imprisonment and to pay a fine of Rs.1,000/- for the offence under Section 324 of IPC and to undergo three years simple imprisonment and to pay a fine of Rs.1,000/- for the offence under Section 326 of IPC. All the sentences to run concurrently, against which, the petitioner preferred a revision in Crl.R.C.No.97 of 2024 before this Court along with suspension of sentence petition.

3.During trial, on the side of the prosecution, PW1 to PW14 examined and marked Exs.P1 to P16 and marked material objects M.O.1 and M.O.2. On the side of the defence, no witnesses examined and no materials marked. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced convicted the petitioner and the Lower Appellate Court confirmed the conviction and modified the sentence imposed by the Trial Court as stated above.

4.The contention of the learned counsel for petitioner is that in this case PW2 is the injured person. PW13 is the Doctor, who examined PW2 at the first instance. The evidence of PW13 is that PW2 came for treatment along with the police and he recorded in the Accident Register that in the



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right palm there was small injuries including a cut injury and he issued Wound Certificate/Ex.P8. PW12 is the Radiologist, who had taken scan on the injured/PW2/Senthil Kumar. From the X-ray it is seen that on the right hand there was a slight dislocation and he had given a X-ray report/Ex.P7. PW10 is the another Doctor, who had given continues treatment from 25.04.2015 to 30.04.2015 to PW2. PW8/Doctor, who issued Ex.P5/Wound Certificate, confirms that there is a cut injury on the right palm. Further it is recorded that PW2 informed that he was assaulted using stone. The learned counsel submitted that the evidence of PW2 is otherwise. The petitioner herein came in a two wheeler, took the Aruval from the two wheeler and attacked him on his forehead and on the right hand and inflicted several cut injuries. PW1 states that he was with his brother/PW2 when PW2 was attacked by the petitioner. He states that the occurrence is on 24.04.2015 on the other hand PW2 states that the occurrence is on 24.02.2015, which was reiterated and confirmed in the cross examination. He further submitted that the medical evidence and ocular evidence are contrary. The evidence of PW1 and PW2 with regard to the date of occurrence is contradictory to each other. He further submitted that the petitioner has been falsely implicated in this case. Hence, he prays for granting suspension of sentence to the petitioner.



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5.The learned Additional Public Prosecutor submitted that there was a previous enmity with regard to the loan taken by PW9 from the petitioner on the recommendation of PW1 and PW2 and PW9 not repaid the same. Thereafter, on 24.04.2015 at about 10.00 p.m. when PW1 was with PW2, the petitioner came in a two wheeler, abused them and took the knife under the seat of Scooty, attacked PW2 on his head and caused serious injuries. The accused was arrested, on his confession the knife was recovered and thereafter on conclusion of investigation, charge sheet filed. During trial, PW1 to PW14 examined and marked Exs.P1 to P16 and marked material objects M.O.1 and M.O.2. In this case, PW2 is the injured witness. His injury has been confirmed by the Doctors/PW8, PW10, PW12 and PW13, who treated the injured. PW1 is the brother of PW2, who was along with the injured at the time of attack. The petitioner/accused is known to them, hence, the question of identity does not arise. The other witnesses have clearly spoken about the petitioner attacking the injured. The trial Court, on the evidence and materials had rightly convicted the petitioner. Hence, prays for dismissal of the petition.



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6.Considering the submissions made and on perusal of the material, it is seen that PW1 and PW2 were together at the time of incident and they are brothers. PW1's evidence is that the occurrence took place on 24.04.2015 but PW2 in his evidence states that the occurrence took place on 24.02.2015, which was reiterated and confirmed in the cross examination. Hence, the presence of PW1 is doubtful. With regard to the nature of injury, PW2 was treated by four Doctors and the Doctors state that injury is on the right hand, one cut injury and others are bruises. But the evidence of PW2 is that he was attacked on his head, thereafter on his hand and inflicted with several cut injuries. The medical evidence and ocular evidence are contradictory. This Court finds that the finding of the Courts below needs to be reconsidered. Further taking note of the fact that there are arguable points involved in this revision and it would take some time for the revision to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioner.

7.Accordingly, the relief of suspension of sentence and bail are granted on the following conditions till the disposal of the above Criminal revision:

- (a) The petitioner is ordered to be enlarged on bail, on condition that he shall execute a bond for



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a sum of Rs.10,000/- (Rupees Ten thousand only), with two sureties, each for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Pollachi, Coimbatore District;

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned Magistrate may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) 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 disposal of the 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.

8. Accordingly, this Criminal Miscellaneous Petition is ordered.

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M. NIRMAL KUMAR, J.

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To

- 1.The Inspector of Police,
Anamalai East Police Station,
Pollachi, Coimbatore District.
- 2.The Assistant Sessions Judge,
Pollachi, Coimbatore.
- 3.The I Additional District and Sessions Judge,
Coimbatore.
- 4.The Judicial Magistrate No.I,
Pollachi, Coimbatore District.
- 5.The Superintendent of Police,
Central Prison, Coimbatore.
- 6.The Public Prosecutor,
High Court, Madras.

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