



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Seventeenth day of October Two Thousand Sixteen

PRESENT

The Hon`ble Mr.Justice S.NAGAMUTHU
and
The Hon`ble Mr.Justice M.GOVINDARAJ

CRL MP(MD) No.8458 of 2016
IN
CRL A(MD) No.330 of 2016

SIVAKUMAR

... PETITIONER/PETITIONER

Vs

STATE REP.BY ,
THE INSPECTOR OF POLICE
LALGUDI ALL WOMEN POLICE STATION,
TRICHY DISTRICT,
CRIME NO. 14 OF 2012.

... RESPONDENT/RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed in the Judgement dated 17.08.2015 made in S.C. No. 98 of 2013 on the file of the Sessions Judge Mahila Court Tiruchirapalli and enlarge him on bail pending disposal of the instant Criminal appeal.

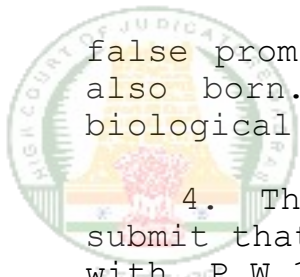
Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S T.VADIVELAN, Advocate for the petitioner and of MR.C.MAYILVAHANA RAJENDRAN, Additional Public Prosecutor on behalf of the Respondent the court made the following order:-

[Order of the Court was made by **S.NAGAMUTHU, J.**]

The petitioner has been convicted for the offence punishable under Section 376 of the Indian Penal Code and sentenced to undergo imprisonment for life and to pay a fine of Rs.25,000/-, in default, to undergo simple imprisonment for one year, in S.C.No.98 of 2013, on the file of the learned Sessions Judge, Mahila Court, Tiruchirapalli, by judgment dated 17.08.2015. Challenging the said conviction and sentence, the petitioner has come up with the present Criminal Appeal. Pending appeal, he seeks suspension of sentence.

2. We have heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing on behalf of the State. We have also perused the records carefully.

3. P.W.1 in this case is the victim. She has categorically stated that the accused had sexual intercourse with her on the



false promise of marriage. She became pregnant. Now, the child has also born. The DNA test has proved that the petitioner is the biological father.

4. The learned counsel for the petitioner would, however, submit that the said sexual intercourse of the accused, which he had with P.W.1, was with pre-consent and, therefore, there is no question of rape.

5. But, a perusal of the evidence would go to show that the consent was not given freely and it was by playing deception on P.W.1. In such view of the matter, *prima facie*, we are satisfied that the consent given allegedly by P.W.1 is not a free consent, in terms of Section 375 of the Indian Penal Code.

6. In such view of the matter, in our considered view, it is not a fit case for grant of suspension. The plight of the child is also a factor to be taken note of.

7. For the reasons stated above, we are not inclined to suspend the substantive sentence imposed upon the petitioner and the petition is, accordingly, dismissed.

sd/-
17/10/2016

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE SESSIONS JUDGE, MAHILA COURT, TIRUCHIRAPALLI.
- 2 THE INSPECTOR OF POLICE,
LALGUDI ALL WOMEN POLICE STATION, TRICHY DISTRICT,
- 3 THE ADDITIONAL PUBLIC PROSECTUOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- 4 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.

SML
CSL/EM-MPA/SAR-I/24.10.2016: 2P/5C

ORDER
IN
CRL MP(MD) No.8458 of 2016
IN
CRL A(MD) No.330 of 2016
Date :17/10/2016