

IN THE HIGH COURT OF JUDICATURE AT MADRAS

( Criminal Jurisdiction )

Wednesday, the Fifteenth day of February Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice M. VENUGOPAL

CRIMINAL MISCELLANEOUS PETITION No.1095 of 2017

IN CRL A.43/2017

MATHIYAZHAGAN

[ PETITIONER ]

Vs

STATE BY,  
INSPECTOR OF POLICE,  
ALL WOMEN POLICE STATION,  
ULUNDURPET.  
CRIME.NO.2 OF 2012.

[ RESPONDENT ]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.43/2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court), Villupuram in S.C.No.538 of 2013 dated 03.01.2017 by which the accused/Appellant was convicted and sentenced to undergo rigorous imprisonment for one year and fine of Rs.1,00,000/- in default to undergo rigorous imprisonment for another six months from the offence under section 417 IPC pending disposal of the above CRL A.43/2017.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.43/2017 on the file of the High Court and upon hearing the arguments of M/S.C.MUNUSAMY, Advocate for the petitioner and of MR. R.RAVICHANDRAN, Govt. Advocate ( Crl. Side) on behalf of the Respondent the court made the following order:-

Heard Mr.C.Munusamy, Learned Counsel for the Petitioner/Appellant and Mr.R.Ravichandran, Learned Government Advocate (Crl.Side) for the Respondent/Complainant.

2.The Petitioner/Appellant/Accused has preferred the instant Criminal Appeal before this Court as against the Judgment dated 03.01.2017 in S.C.No.538 of 2013 passed by the Learned Sessions Judge, Mahalir Neethimandram, (Fast Track Mahila Court), Villupuram.

3.The Learned Sessions Judge, Mahalir Neethimandram, (Fast Track Mahila Court), Villupuram, while passing the Judgment in S.C.No.538 of 2013 on 03.01.2017, had found the Petitioner/ Appellant/Accused guilty in respect of an offence under Section 417 I.P.C. and sentenced him to undergo Rigorous Imprisonment for a period of one

year and also imposed a fine of Rs.1,00,000/-, in default of payment of said fine amount, he was also directed to undergo six months Rigorous Imprisonment. Further, it was ordered that the fine amount of Rs.1,00,000/- was to be paid as compensation to the child Thirusendhramathi, aged about 2 years, M/o.Tamizhsankavi for the welfare of the child out of the said physical relationship etc.

4.The Petitioner/Appellant/Accused has filed the present Appeal (as an aggrieved person) as against the Judgment dated 03.01.2017 in S.C.No.538 of 2013 passed by the trial Court, primarily contending that the trial Court had convicted the Petitioner/Appellant/Accused based on conjectures and surmises. Further, it is represented on behalf of the Petitioner/Appellant that there is no plausible evidence adduced on behalf of the Prosecution so as to establish the accusation levelled against him.

5.Advancing his arguments, the Learned Counsel for the Petitioner/Appellant contends that the trial Court had acquitted the Petitioner/Appellant in respect of an offence under Section 376 I.P.C. (holding that the said offence was not proved), but convicted the Petitioner/Appellant and sentenced him to undergo one year Rigorous Imprisonment, besides imposing a fine of Rs.1,00,000/- when there is no iota of evidence to hold him guilty.

6.The Learned Counsel for the Petitioner/Appellant takes a plea that the Respondent/Prosecution had not established that the Petitioner/Appellant gave a false promise and in fact, the evidence of witnesses would not point out a finger against the Petitioner/Appellant/ Accused and when, in fact, no one had witnessed the occurrence, the question of false promise was not established in the instant case on hand.

7.Lastly, it is the submission of the Learned Counsel for the Petitioner/Appellant that there are number of contradictions among the evidence of witnesses and furthermore, they are quite unnatural and not cogent and coherent one.

8.Per contra, it is the submission of the Learned Government Advocate (Crl. Side) that before the trial Court on behalf of the Respondent/Prosecution witnesses viz., P.W.1 to P.W.15 were examined and Exs.P1 to P7 were marked. As a matter of fact, no one was examined as a witness on the defence side and no document was marked. Indeed, the trial Court, on an appreciation of the entire oral and documentary evidence, came to the conclusion that the Petitioner/Appellant/Accused was guilty in respect of an offence under Section 417 I.P.C. and imposed him with necessary punishment. Added further, the Petitioner/Appellant was also directed to pay a fine of Rs.1,00,000/- etc.

9.At this juncture, the Learned Counsel for the Petitioner/Appellant brings it to the notice of this Court that the Petitioner/Appellant had remitted a sum of Rs.40,000/- on 07.02.2017, as per order passed by this Court dated 01.02.2017 in Crl.A.No.43 of 2017. Before that, the Petitioner/Appellant had also remitted a sum of

Rs.10,000/- to the credit of S.C.No.538 of 2013 on the file of the trial Court.

10.It is to be borne in mind that in Law, 'an Appeal' is a continuation of Original Proceedings of the trial Court. In fact, the Petitioner/Appellant/Accused has filed the present Appeal by exercising his statutory right as prescribed under Criminal Procedure Code.

11.At this stage, this Court, on perusal of the various grounds raised by the Petitioner/Appellant in the 'Memorandum of Grounds of Appeal', is of the considered view that the Petitioner/Appellant has raised some tangible/substantial points which require detail consideration in the hands of this Court at the time of final hearing of the main Appeal.

12.It cannot be forgotten that filing of a 'Miscellaneous Petition' seeking 'Suspension of Sentence' and to enlarge an Accused on Bail forms an integral part of the main Appeal.

13.It is to be pointed out that when an individual is sentenced to a short term imprisonment, the normal rule is that pending Appeal, the sentence should be suspended and reduction is only by means of an exception, as per decision of the Hon'ble Supreme Court in Kiran Kumar V. State of M.P. 2000 (41) All CrC 884 (884) (SC).

14.In view of the fact that the Petitioner/Appellant has filed the instant Criminal Appeal before this Court and also, this Court, taking note of the fact that the present Appeal is a continuation of Original Proceedings of the trial Court and also bearing in mind yet another fact that the the present Criminal Appeal is not likely to be heard in the near future and also this Court, considering the other attendant facts and circumstances of the present case, at this stage, is inclined to suspend the Substantial Sentence of Imprisonment alone and orders the release of the Petitioner/Appellant/Accused on his executing a bond for a sum of Rs.15,000/- (Rupees Fifteen Thousand only) with two sureties each for a like sum to the satisfaction of the Learned Sessions Judge, Mahalir Neethimandram, (Fast Track Mahila Court), Villupuram and on further condition that he shall appear before the said Court on the First Working day of every English Calender month at 11.00 a.m. without fail, till the disposal of the Criminal Appeal.

15.Accordingly, the Crl.M.P.No.1095 of 2017 is ordered, on above terms.

-sd/-

15/02/2017

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)  
High Court, Madras - 600 104.

TO

1 THE SESSIONS JUDGE,  
MAHALIR NEETHIMANDRAM,  
(FAST TRACK MAHILA COURT),  
VILLUPURAM.

2 THE PUBLIC PROSECUTOR  
HIGH COURT, MADRAS.

3 INSPECTOR OF POLICE,  
ALL WOMEN POLICE STATION,  
ULUNDURPET.

C.C. to M/S.C.MUNUSAMY Advocate on payment of necessary charges  
sr.3216

Order

in  
CRL MP.1095/2017

in  
CRL A.43/2017

Date :15/02/2017

From 7.2.2001 the Registry is issuing certified  
copies of the BAIL/Anti.BAIL Orders in this format

RVR 20/02/2017