

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Tenth day of November Two Thousand Seventeen

PRESENT

The Hon`ble Dr. Justice S. VIMALA

CRIMINAL MISCELLANEOUS PETITION No.13858 and 13259 of 2017

IN CRL RC.1407/2017

ANAND,

[PETITIONER
IN ALL THE PETITIONS]

Vs

STATE REP. BY,
INSPECTOR OF POLICE,
ALL WOMENS POLICE STATION,
CHIDAMBARAM, CHIDAMBARAM,
CUDDALORE DISTRICT.
CR.NO.5 OF 2012.

[RESPONDENT IN ALL THE PETITIONS]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Revision Case No.1407/2017 on the file of the High Court, the High Court will be pleased to

[I]suspend the sentence passed by the learned II Addl. District & Sessions Judge, Chidambaram in C.A.No.17/2017 judgment dated 03.10.2017 and enlarge the petitioner on bail, confirming the Judgment passed in C.C.No.16 of 2013 on the files of District Munsif cum Judicial Magistrate, Portonovo, pending disposal alone criminal revision.[CRL.MP.NO.13858/2017]

[II]Exempt the petitioner from surrendering before the plea of suspension of sentence is disposal of in pursuant to the Judgment dated 03.10.2017 passed in C.A.No.17/2017 on the files of the learned II Addl. District and sessions Judge, Chidambaram confirming the Judgment passed in C.C.No.16 of 2013 on the files of District Munsif cum Judicial Magistrate, Portonovo, pending disposal alone criminal revision.[CRL.MP.NO.13859/2017]

Order : These petitions coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Revision Case No.1407/2017 on the file of the High Court and upon hearing the arguments of M/S.G.S.DHANALAKSHMI Advocate for the petitioner and of MR.V.ARUL Addl. Public prosecutor on behalf of the Respondent the court made the following order:-

The petitioner was convicted for the offence under Section 417 of IPC and sentenced by the learned District Munsif cum Judicial Magistrate, Portonovo, vide under judgment dated 15.02.2017, in C.C.No.16 of 2013 as follows and

Offence	Sentence
417 of IPC	One year Rigorous Imprisonment, with fine of Rs.1,000/-, in default, to undergo two months Simple Imprisonment

Aggrieved by the same, the petitioner preferred an appeal in Crl.A.No.17 of 2017 before the learned II Additional District & Sessions Judge, Chidambaram. Vide Judgment dated 03.10.2017, the appellate Court, dismissed the appeal. Challenging the same, the accused has filed the present Criminal Revision Case and pending revision, he has filed Crl.M.P.No.13858 of 2017 seeking to suspend the sentence and to enlarge her on bail and also filed Crl.M.P.No.13859 of 2017 to exempt her from surrendering before the trial Court.

2.The learned counsel for the revision petitioner submitted that it is the case of the major girl having relationship with the accused freely, voluntarily and with full consent and there was no deceit by the accused. However, on misconception the courts below had convicted the accused.

3.The learned counsel for the revision petitioner submits that there was no intention on the part of the accused to cheat the victim. The overall facts of the case needs to be considered in the light of the judgment of the Supreme Court reported in **2016 SCC online Mad 22916, Ganesan Vs. State rep. by Deputy Superintendent of Police, Namakkal.**

"23.Keeping in view the approach that the Court must adopt in such cases, we shall now proceed to consider the evidence on record. In the instant case, the prosecutrix was a grown up girl studying in a college. She was deeply in love with the appellant. She was however aware of the fact that since they belonged to different castes, marriage was not possible. In any event the proposal for their marriage was bound to be seriously opposed by their family members. She admits having told so to the appellant when he proposed to her the first time. She had sufficient intelligence to understand the significance and moral quality of the act she was consenting to. That is why she kept it a secret as long as she could. Despite this, she did not resist the overtures of the appellant, and in fact succumbed to it. She thus freely exercised a choice between resistance and assent. She must have known the consequences of the act, particularly when she was conscious of the fact that their marriage may not take

place at all on account of caste considerations. All these circumstances lead us to the conclusion that she freely, voluntarily, and consciously consented to having sexual intercourse with the appellant, and her consent was not in consequence of any misconception of fact."

4.Considering the fact that there are arguable points involved in the revision as contended by learned counsel for petitioner and further the revision not being likely to be taken up for final hearing in the near future, this Court is of the considered view that the petitioner herein is entitled to the relief of suspension of sentence.

5.Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail, on conditions that the petitioner 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 District Munsif cum Judicial Magistrate, Portonovo and on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.30 a.m. pending revision.

6. As far as petition seeking exemption to surrender is concerned, in the light of the judgment of the Hon'ble Supreme Court rendered in the case of **Easwaramurthy vs. N.Krishnaswamy (2006) Crl.L.J.4105** which in turn relied on the decision of the Apex Court in **Bihari Prasad Singh vs. State of Bihar (2000) SCC (Cri) 1380**, this Court considers it appropriate to allow this petition as prayed for. Accordingly, the petitioner is exempted from surrendering before the Court below.

-sd/-
10/11/2017

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 DISTRICT MUNSIF CUM
JUDICIAL MAGISTRATE, PORTONOVO

2 THE CHIEF JUDICIAL MAGISTRATE
CUDDALORE[FOR INFORMATION]

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 STATE REP. BY,
INSPECTOR OF POLICE,
ALL WOMENS POLICE STATION,
CHIDAMBARAM, CUDDALORE DISTRICT.

5 THE II ADDITIONAL DISTRICT &
SESSIONS JUDGE, CHIDAMBARAM

+1 C.C. to M/S.G.S.DHANALAKSHMI Advocate on payment of
necessary charges SR.NO. 20753

Order

in
CRL MP.13858 & 13259/2017

in
CRL RC.1407/2017

Date :10/11/2017

From 7.2.2001 the Registry is issuing certified
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RD 15/11/2017