

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Tenth day of February Two Thousand Seventeen

PRESENT

The Hon`ble Mr Justice M. VENUGOPAL

CRIMINAL MISCELLANEOUS PETITION No.2015 of 2017

IN CRL A.70/2017

MAGENDIRAN

[PETITIONER]

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
NAMAKKAL, NAMAKKAL DISTRICT.
CR.NO.2/2014.

[RESPONDENT]

Petition praying that in the circumstances stated therein the High Court will be pleased to suspend the sentence is judgment dated 19.01.2017 in S.C.No.93/2014 on the file of Magila Fast Track Court, Namakkal and to direct the respondent to release the petitioner/appellant on bail pending disposal of Crl.A.No.70 of 2017.

Order : This petition coming on for orders upon perusing the petition and upon hearing the arguments of M/S.DR.G.KRISHNAMURTHY, Advocate for the petitioner and of M/S R.RAVICHANDRAN, Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

Heard both sides.

2.The Petitioner/Appellant/A2 has focussed the instant Criminal Appeal before this Court as against the Judgment dated 19.01.2017 in S.C.No.93 of 2014 passed by the Sessions Judge, Mahila Fast Track Court, Namakkal.

3.It transpires that the Petitioner/Appellant/A2 was found guilty by the trial Court in respect of an offence under Section 376 read with 511 I.P.C. and imposed a punishment of Rigorous Imprisonment for a period of five years and also directed him to pay a fine of Rs.2,000/-, in default of payment of fine, he was directed to further undergo three months Rigorous Imprisonment.

4.However, in respect of an offences under Sections 498(A) I.P.C. and Section 4 of the Dowry Prohibition Act, 1961, the Petitioner/ Appellant /A2 was acquitted. As a matter of fact, the first Accused died on 16.04.2016 pending trial of S.C.No.93 of 2014. The charges levelled against him under Section 498(A),

376 read with 511 read with 109 I.P.C. and 4 of the Dowry Prohibition Act, 1961 were stood abated. However, the third Accused was acquitted in respect of charges levelled against him under Sections 498(A), 376 read with 511 read with 109 I.P.C. and Section 4 of the Dowry Prohibition Act.

5.Assailing the legality and correctness of the Judgment of the trial Court dated 19.01.2017 in S.C.No.93 of 2014, the Learned Counsel for the Petitioner/Appellant/A2 submits that the case of the Prosecution against the Petitioner/Appellant/A2 was that on 08.11.2011 at about 4'o clock in the evening, when A1 was not in the house, A2 removed the Saree of P.W.1 and torn her jacket from pushed her down and after resting on her, he made an attempt to commit rape and for the said act, the trial Court had convicted and sentenced him by imposing necessary punishments.

6.The Learned Counsel for the Petitioner/Appellant/A2 urges before this Court that the Petitioner/Appellant/A2 is a handicap person and in fact, the trial Court had not discussed and appreciated the evidence of witnesses in a proper and real perspective and only with a predetermination had passed the Judgment of conviction, which is per se illegal.

7.According to the Learned Counsel for the Petitioner/Appellant/ A2, the trial Court should have disbelieved the evidence of P.W.1 to P.W.7 and consequently, should have passed a Judgment of acquittal.

8.The Learned Counsel for the Petitioner/Appellant/A2 projects an argument that even assuming without admitted that the facts of the prosecution case to be a true one, in the instant case, the trial Court should have convicted the Petitioner/Appellant/A2 only under Section 354 I.P.C., but the same was not done which has resulted in serious miscarriage of Justice.

9.It is represented on behalf of the Petitioner/Appellant/A2 that the fine of Rs.2,000/- was paid before the trial Court itself to the credit of S.C.No.93 of 2014.

10.Conversely, it is the submission of the Learned Government Advocate (Crl. Side) for the Respondent/Complainant that on behalf of the Respondent/Complainant, witnesses P.W.1 to P.W.10 were examined. Exs.P1 to P7 were marked. However, no M.Os. were marked. On the side of the Petitioner/ Appellant/A2, no one was examined as a witness and no document was marked. In reality, the trial Court, after analysing the entire gamut of oral and documentary evidence available on record, found the Petitioner/Appellant/A2 guilty in respect of offence under Section 376 read with 511 I.P.C. and 4 of the Dowry Prohibition

Act and imposed necessary punishments.

11.It is to be noted that a filing of a 'Miscellaneous Petition' seeking 'Suspension of Sentence' and for 'Enlargement of Bail' by the concerned Petitioner/Accused, forms an integral part of the main Appeal in Criminal Law.

12.It cannot be gainsaid that the Petitioner/Appellant/A2 has preferred the instant Criminal Appeal before this Court (as a dissatisfied person) as against the Judgment of the trial Court passed in S.C.No.93 fo 2014 dated 19.01.2017 and in fact, he has exercised his statutory right of preferring an Appeal before this Court, as envisaged under Criminal Procedure Code. No wonder, an Appeal is a continuation of Original Proceedings of the trial Court. At this juncture, this Court has perused the various grounds raised in the 'Memorandum of Grounds of Appeal' and is of the earnest view that they require detail rumination in the hands of this Court at the time of final hearing of the main Appeal.

13.It may not be out of place for this Court to make a pertinent mention 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 Bhagwanram Shindey V. State of Gujarat, 1999 (39) ACC 302 (SC).

14.In view of the fact that the Petitioner/Appellant/A2 has filed the present Criminal Appeal before this Court [which is a continuation or Original Proceedings of the trial Court] and also this Court, taking note of the attendant facts and circumstances of the present case and also bearing in mind yet another fact that the Petitioner/Appellant/ A2 is a handicap person and also, considering the fact that the present Criminal Appeal is not likely to be heard in the near future, at this stage, is inclined to suspend the Substantial Sentence of Imprisonment alone and orders the release of the Petitioner/Appellant/A2 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, Mahila Fast Track Court, Namakkal 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.2015 of 2017 is ordered, on above terms.

-sd/-
10/02/2017

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,
MAHILA FAST TRACK COURT,
NAMAKKAL

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

4 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
NAMAKKAL, NAMAKKAL DISTRICT.

C.C. to M/S.DR.G.KRISHNAMURTHY Advocate on payment of necessary charges Sr.2857

Order

in
CRL MP.2015/2017

in
CRL A.70/2017

Date :10/02/2017

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RVR 10/02/2017