

Bail Slip

The Petitioner/Accused No.1.namely Padma, W/O.Narayanan was directed to be released on bail as per order dated 04/07/2011 and made in MP.1 of 2011 in crl.A.No.365 of 2011 on the file of this Honble Court

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.07.2018

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Criminal Appeal No.365 of 2011

Padma
Appellant/Accused-1

Vs

State represented by
The Inspector of Police,
P.3, Vysarpadi Police Station,
Chennai.
Crime No.833/2003

Respondent/ Complainant

Prayer:- Criminal Appeal filed under Section 374(2) Cr.P.C., to set aside the conviction and sentence passed on her by the X Metropolitan Magistrate Court in C.C.No.31752 of 2004 dated 02.05.2011.

For Appellant : Mr. V.Arunkumar (Legal Aid Counsel)

For Respondent : Mr.G.Raman,
Govt. Advocate (Crl.side)

JUDGMENT

The Criminal appeal has been filed under Section 374 (2) of Cr.P.C. to set aside judgment of the conviction, dated 02.05.2011 in C.C.No.31752 of 2004, on the file of X Metropolitan Magistrate Court, Chennai and allow the appeal.

2.The accused No.1, Padma, in C.C.No.31752 of 2004 on the file of X Metropolitan Magistrate Court, Chennai, is the

appellant in this appeal. She along with other accused stood charged for the offence under Sections 120(b), 406, 420 and 506 (ii) of IPC. By the judgment dated 02.05.2011, the trial Court convicted the accused and sentenced to undergo two years Rigorous Imprisonment and to pay a fine of Rs.2,000/-, in default to undergo 3 months Simple Imprisonment for the offence under Section 406 IPC. Further, she was convicted for the offence under Section 420 IPC and sentenced with the same punishment awarded for the offence under Section 406 IPC as stated above. Further, the sentences are ordered to run concurrently. Challenging the above conviction and sentence, the appellant/accused is before this Court with this appeal.

3. Earlier, when the Appeal was posted for consideration on 09.03.2018, there was no representation for the appellant, so this Court directed the Registry to appoint Legal Aid Counsel to represent the case of the appellant and thereafter, the appeal was adjourned several times. In the said circumstances, this Court, on 24.07.2018, appointed Mr.S.N.Arun Kumar as Legal Aid Counsel for representing the case of the appellant. Further Rs.3,000/- is fixed as remuneration for his service.

4. The case of the prosecution in brief, is as follows:

Prior to the occurrence, PW1, Abirami approached the appellant for joining as a member in the chit run by her. After receiving the subscription of chit regularly, the appellant and other accused have not repaid the matured amount after completion of the entire chit period. So, all the subscribers who were examined as PW1 to PW9, had approached the PW10-the then Inspector of Police, Vysarpadi, for settling the issue. For which, PW1, lodged a complaint before the said Inspector. On receipt of the complaint, a case has been registered in Crime No.833 of 2003 under Sections 406, 420, 120 (b) and 506 (ii) of IPC.

5. After registration of the case, PW10 examined the subscribers and recorded their statements. On 02.01.2004, he arrested the appellant and other accused and recorded their confession statement. Further, he made arrangements for sending them to judicial custody. On 17.12.2004, on conclusion of investigation, he submitted final report before the said Magistrate Court.

6. Based on the materials available on record, the trial Court framed the charges against the accused persons as stated supra. All the accused denied the same. To prove the case on the side of the prosecution, 10 witnesses were examined as PW1 to PW10 besides two exhibits are marked as P1 & P2. After concluding the trial, the appellant (A1) herein was convicted as already stated above. Challenging the said conviction and

sentence, she is before this Court.

7. Having considered the jurisdiction, the alleged offence committed by the appellant (i.e.) 406, 420 IPC are triable by Ist Class Magistrate. With regard to the appeals arising from the judgment of the Ist Class Magistrate, Section 374 of the Code of Civil Procedure reads as follows:

374. Appeals from convictions.

(1) Any person convicted on a trial held by a High Court in its extraordinary original criminal jurisdiction may appeal to the Supreme Court.

(2) Any person convicted on a trial held by a Sessions Judge or an Additional Sessions Judge or on a trial held by any other Court in which a sentence of imprisonment for more than seven years has been passed against him or against any other person convicted at the same trial; may appeal to the High Court.

(3) Save as otherwise provided in subsection (2), any person,—

(a) convicted on a trial held by a Metropolitan Magistrate or Assistant Sessions Judge or Magistrate of the first class or of the second class, or

(b) sentenced under section 325, or

(c) in respect of whom an order has been made or a sentence has been passed under section 360 by any Magistrate, may appeal to the Court of Session.

8. Therefore, as per 374 (2) of Cr.P.C., this appeal has to be disposed of only by the Court of Sessions and not by the High Court. Without looking this aspect, the appeal is preferred before this Court in the year 2011 and kept pending till this date, which is nothing but a grave error. Accordingly, this appeal is transferred to the Court of Principal Judge, Chennai, for disposal, according to law.

9. I appreciate the services rendered by Mr.S.N.Arun Kumar, learned counsel appeared on behalf of the appellant/accused, as Legal Aid Counsel. The Legal Services Authority is directed to pay his remuneration.

10. With the above direction, this Criminal Appeal is disposed of.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

kal

To

- 1.The X Metropolitan Magistrate,
Egmore, Chennai.
- 2.The Chief Metropolitan Magistrate,
Egmore, Chennai (For Information)
- 3.The Inspector of Police,
P3, Vyasarpadi Police Station,
Chennai
- 4.The Member Secretary,
Tamil Nadu State Legal service Authority,
Chennai
- 5.The Public Prosecutor,
High Court, Madras.
- 6.The Principal Judge,
city Civil Court,
Chennai

+1cc to Mr.V.Arunkumar, Advocate, S.R.No.50754

Crl.A.No.365 of 2011

NMI (CO)
GSP(04/09/2018)

WEB COPY