

BAIL SLIP
CRL RC.452 OF 2011

The Appellant/Accused Viz, Loganathan, S/o. Ponnusamy, Aged 27 years, is directed to be released on bail, as per order of this court dated 26.07.2011 in MP.3 of 2011 in Crl Rc.452 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 27.04.2018
ORDERS PRONOUNCED ON : 22.06.2018

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.R.C.No.452 of 2011

Loganathan ... Petitioner/Appellant/Accused
versus

State rep. by
Inspector of Police,
All Women Police Station,
Arani. ...Respondent/Respondent/Complainant

Prayer: Criminal Revision Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, against the conviction and sentence imposed by the learned Sessions Judge, Tiruvannamalai in Crl.A.No.45 of 2005 dated 14.02.2011.

For Petitioner : Mr.L.Mahendran
For Respondent : M/s.T.P.Savitha
Government Advocate [Crl.Side]

O R D E R

This Revision has been preferred against the judgment rendered by the learned Sessions Judge, Tiruvannamalai, Tiruvannamalai District in Crl.A.No.45 of 2005 dated 14.02.2011, wherein, the conviction and sentence awarded by the learned Judicial Magistrate, Arani, Tiruvannamalai District in C.C.No.13 of 2002 dated 01.09.2005 in favour of the revision petitioner is confirmed.

2. The gist of the prosecution case is as follows:

2.1. On 26.05.2001, at about 9.00p.m., when the de facto complainant [P.W.1 / Bharathi] was working as a coolie in K.T.R.Rice Mill, Rathinamangalam, Arani, the present revision petitioner had promised to marry her and upon such promise, the petitioner had sexual intercourse with P.W.1 and she became pregnant. Thereafter, she approached the petitioner for marrying her, for which, the petitioner demanded 20 sovereigns of gold

ornaments and Rs.20,000/- as dowry, thereby, P.W.1 lodged a complaint before the respondent police. After receiving the complaint from P.W.1, a case has been registered in Crime No.10 of 2001 for the offence punishable under Section 417 I.P.C. and Section 4 of Dowry Prohibition Act. After completion of investigation, Charge Sheet has been filed for the same offence.

2.2. In the Trial Court, in order to prove the case of prosecution, 13 witnesses were examined on the side of the prosecution as P.W.1 to P.W.13 and 6 documents were exhibited as Ex.P.1 to Ex.P.6. In order to dispute the contents of the documents on the side of the petitioner nobody was present to put forth the case of the petitioner. At the end of the trial, the learned Judicial Magistrate came to the conclusion that the petitioner is found guilty for the offence under Section 417 I.P.C. alone, for which, he awarded conviction and sentenced to undergo one year Rigorous Imprisonment with a fine of Rs.5,000/-, in default to undergo three months Simple Imprisonment. As against the said conviction, the petitioner filed the Criminal Appeal [Crl.A.No.45 of 2005] before the learned District and Sessions Judge, Tiruvannamalai.

2.3. After elaborate enquiry, on 14.02.2011, the learned District and Sessions Judge, Tiruvannamalai, partly allowed the appeal and modified the conviction and sentence, as follows:

"In the result, this Criminal Appeal is partly allowed and the order passed in C.C.No.13/2002, dated : 01.09.2005 by the Judicial Magistrate Court, Arni is modified and the conviction under Section 417 of I.P.C., is hereby confirmed and sentence awarded therein, viz., R.I. for one year is also confirmed and levy of fine of Rs.5,000/- with default clause alone is set aside and the award of compensation of Rs.50,000/- to PW1 Bharathi under section 357 (3) of Cr.P.C., is hereby confirmed."

2.4. Now, in order to check the correctness of the said judgments, the petitioner approached this Court by way of this present revision.

3. It is an admitted fact that during the pendency of enquiry before the learned Judicial Magistrate, Arani, P.W.1 [Bharathi] delivered a child and thereafter, an application was filed by the Investigating Officer for D.N.A. Test and found that the present revision petitioner is the biological father of the child. Considering the said aspect, now, the First Appellate

Court, directed the revision petitioner to pay the compensation as above.

4. Before that being the Revision Court it is necessary to check out whether the petitioner is having the intention to cheat P.W.1 [Bharathi] after made a false promise. In this regard, on going through the complaint dated 02.11.2001 under Ex.P.1, P.W.1 clearly stated that when she was working in a Rice Mill, the petitioner approached her and made a false promise by saying that he would marry her and had physical contact with her. The said averments made in the complaint clearly corroborated in the evidence given before the learned Judicial Magistrate, Arani. In order to corroborate the said evidence, the mother of the victim also stated that after made a promise to P.W.1, the petitioner had physical contact with P.W.1. Further, the same was corroborated by P.W.3 [Amsa], who is the grandmother of P.W.1 and P.W.4 [Chandra] who is the independent witness residing in the same village.

5. Moreover, after the completion of offence, particularly after came to know the stage of pregnancy, the Panchayat was held in Rathinamangalam. In the Panchayat, the petitioner denied the allegation levelled against him. However, as per the evidence of the Doctor [P.W.8], there is no symptom of impotency and the petitioner is capable of potent and ejaculate, for which, the certificate has also issued under Ex.P.2. In the said circumstances, the learned counsel appearing for the revision petitioner made a submission before this Court that in order to get money, the victim girl lodged a false complaint before the police officials. Further, the investigation had not been completed properly according to the law. Now, on going through the said submission along with the records, it is an admitted fact that the result of the D.N.A. Test is accurate to the level of 99.9%. In this case, the evidence given by P.W.1 clearly established that the petitioner is the biological father of the child through which the paternity of the father was proved by the prosecution.

6. Secondly, in order to know the intention before the occurrence, the evidence given by P.W.1 to P.W.4 is cogent and convincing one. Further, it is an admitted fact that P.W.1 is a coolie and further, she leads ordinary life, so using the situation of P.W.1, the petitioner committed the offence. The other witnesses, who are examined on the side of the prosecution for telling the circumstances clearly told that many times P.W.1 and the petitioner are accompanied with each other. So, if the petitioner is really not having any intention, there is no necessity to form a continuous relationship with P.W.1. Accordingly, this Court held that only with an intention to cheat the P.W.1, the petitioner committed the offence, thereby,

without any hesitation, I hold that the petitioner committed an offence under Section 417 I.P.C.

7. With regard to the conviction and sentence awarded by the First Appellate Court, Rs.50,000/- was awarded as a compensation to P.W.1. In fact, P.W.1 gave birth to one female child, the said amount is not at all sufficient for leading a better life. However, in this regard, it is necessary to know the situation of the petitioner also. In the Trial Court, no evidence is adduced to show that the petitioner is a wealthy person. The First Appellate Court only after considering the said situation and other circumstances of the petitioner directed him to pay the compensation as above, which is legally justifiable one. Accordingly, this Court came to the conclusion that the judgment rendered by the learned Sessions Judge, Tiruvannamalai in CrI.A.No.45 of 2005 dated 14.02.2011, does not warrant any interference.

8. In the result, this Criminal Revision is dismissed. The conviction and sentence passed by the First Appellate Court is confirmed. The Trial Court is directed to take steps to secure the custody of the revision petitioner/accused for undergoing the remaining period of sentence.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

sri

To

1.The Sessions Judge,
Tiruvannamalai,
Tiruvannamalai District

2.The Judicial Magistrate,
Arani, Tiruvannamalai District.
(he is required to serve copy of
the order to the petitioner/Accused)

3.The Chief Judicial Magistrate,
Thiruvannamalai.

4.The Inspector of Police,
Government of Tamil Nadu,
All Women Police Station,
Arani.

5.The Public Prosecutor,
High Court, Madras.

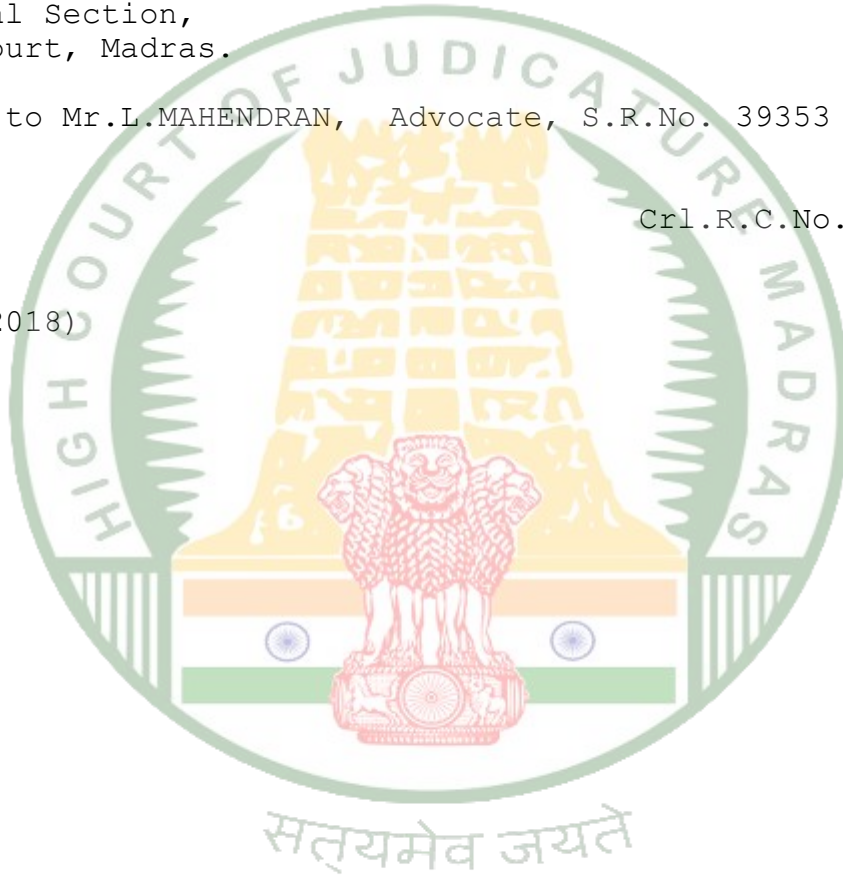
6.The Superintendent, Central Prison, Vellore.

7.The Record Keeper,
Criminal Section,
High Court, Madras.

+1cc to Mr.L.MAHENDRAN, Advocate, S.R.No. 39353

ORDER IN
Crl.R.C.No.452 of 2011

CA(CO)
TR(29/06/2018)



WEB COPY