

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Eighteenth day of January Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice R. SURESH KUMAR

CRIMINAL MISCELLANEOUS PETITION No.198 of 2018

IN CRL A.110/2016

S.C.NO.182 OF 2013

[ON THE FILE OF THE SESSIONS JUDGE, [MAHALIR NEETHIMANDRAM,CHENNAI]

KUMAR @ CHOKKALINGAM, [PETITIONER]

Vs

THE STATE REP BY ITS, [RESPONDENT]
THE INSPECTOR OF POLICE,
V-4 RAJAMANGALAM
POLICE STATION, CHENNAI.
CRIME NO.1043 OF 2011

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.110/2016 on the file of the High Court, the High Court will be pleased to suspend the sentence and conviction dated 21/12/2015 passed in S.C.No.182/2013, against the petitioner/Appellant by the Learned Sessions Judge (Mahila Neethimandram), Chennai enlarge him on bail pending disposal of the above main appeal and thus render justice.[CRL.MP.1533/2016]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.110/2016 on the file of the High Court and upon hearing the arguments of M/S.A.THIRUVILANKUMAR Advocate for the petitioner and of MR.S.THANKIRA Government Advocate[crl.side] on behalf of the Respondent the court made the following order:-

This petition has been filed to suspend the sentence imposed against the accused / petitioner by the judgment and conviction through the order of the trial Court namely the Sessions Judge, (Mahalir Nithimandram), Chennai dated 21.12.2015 made in S.C.No.182 of 2013.

2. The petitioner was charged for the offences punishable under Sections 328, 342 & 376 of I.P.C. and under Section 4 of the Tamil Nadu Prohibition of Women Harassment Act.

3. On the side of the prosecution, 11 witnesses were examined, 13 documents were marked. No material objects were produced on the side of prosecution and there was no witness on the defence side.

P.W.1 (victim), was a minor at the time of occurrence dated 21.12.2015. According to the prosecution, P.W.1, on the date of occurrence, while she was coming from school, was intercepted by the petitioner / accused, who is the neighbour and at his insistence and request made to P.W.1 to help him to handle the water pot, P.W.1 went inside the house of the petitioner /accused and there, according to P.W.1 she was offered juice by the petitioner/accused and after taking the same, P.W.1 developed some head pain and therefore, she was advised by the petitioner/accused to take rest at his home. After some time, P.W.1 become normal and she realised that something has happened to her.

4. In this regard, P.W.2 mother of the victim(P.W.1) deposed that when she came to her house, found that her daughter(P.W.1) was not there. Therefore, she went to her sister's(P.W.4) house, which was located nearby, and she enquired about P.W.1 and it was replied by P.W.4 that few minutes back P.W.1 came in search of her and she returned back. Thereafter, P.W.2 along with P.W.4 went in search of P.W.1 and later P.W.4 brought P.W.1 from the petitioner's/ accused house.

5. In this regard, it was the deposition of P.W.2 - mother of the victim (P.W.1), that, when she enquired P.W.1 she did not reveal anything, inspite of P.W.2 beating her, and in the evening, she did not take the dinner. However, according to P.W.2, on the next day to the date of occurrence P.W.1 went to school and only in the afternoon, the teacher of the school informed P.W.2 that, P.W.1 was not in a normal state of mind. Therefore, P.W.2 took P.W.1 to home and again enquired what had happened to her. After repeated enquiry and in fact after forcible beating, P.W.1, according to P.W.2, started telling the entire incident that had happened during the previous day. Thereafter, P.W.2 along with the mother of petitioner/accused, took P.W.1 to Kumaran hospital, where P.W.1 was examined by the doctors.

6. The very same incident, however has been differently deposed by P.W.4, the aunt of P.W.1. According to P.W.4, on the date of occurrence (i.e.,) 12.07.2011, during the evening hours, P.W.1 came to the house of the P.W.4 in search of her mother (P.W.2) and thereafter, she left immediately. After some time P.W.2 came in search of her daughter (P.W.1). Thereafter, she along with P.W.2 went in search of P.W.1 and in this regard, some of the neighbours, according to P.W.4, informed that P.W.1 was inside the house of the petitioner/accused and therefore, P.W.4 went to the house of the petitioner / accused and requested him to recharge her sim card for Rs.10. At that time, the petitioner/accused went inside the house keeping one door open and the other one closed. On suspicion, P.W.4 went inside the house and found that P.W.1 was sitting in the house of the petitioner/accused without proper dress. Immediately, P.W.4 claimed that, she brought P.W.1 to the house of P.W.2 and thereafter, it was claimed by P.W.4 that, they took P.W.1 to the hospital on the same day, where she was examined by the doctors and they said that P.W.1 has been ravished.

7. The deposition of P.W.2 - mother of the victim and P.W.4 - the aunt of the victim, infact have given different story for the same date of occurrence. These contradictions even though specifically not pointed out by the defence side, the learned trial Court also has not given more consideration on these contradictions. However, this Court feels that, these contradictions, whether would amount to be fatal for the prosecution case or not, can only be decided by way of a full fledged final hearing of the Appeal.

8. Since it will take some more time for the final hearing of the appeal, this Court is of the view that, since the petitioner/accused had been in jail for more than 2 years from 21.12.2015, to meet the ends of justice, at this time, since these contradictions on the main witnesses of the prosecution side, is prima facie available, this Court is inclined to accept this petition at this juncture and accordingly, the following orders are passed. That the substantive sentence imposed on the petitioner / accused alone is hereby suspended, on condition that,

- 1) the petitioner/accused shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand) with two sureties each for a like sum to the satisfaction of the X-th Metropolitan Magistrate Court, Egmore, Chennai.
- 2) the petitioner/accused shall report before the X-th Metropolitan Magistrate Court, Egmore, Chennai at 10:30 A.M., on the first working day of every English Calendar month until further orders.

9. Accordingly, the present **Criminal Miscellaneous Petition is ordered.**

-sd/-

18/01/2018

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 NITHIMANDRAM] CHENNAI

2 THE METROPOLITAN MAGISTRATE,
COURT NO.X, EGMORE, CHENNAI

3 THE CHIEF METROPOLITAN
MAGISTRATE, EGMORE [FOR INFORMATION]

4 THE STATE REP BY ITS,
THE INSPECTOR OF POLICE,
V-4 RAJAMANGALAM
POLICE STATION, CHENNAI.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL, CHENNAI

+1 C.C. to M/S.A.THIRUVILANKUMAR Advocate on payment of
necessary charges SR.NO. 1111

Order

in
CRL MP.198/2018

in
CRL A.110/2016

Date :18/01/2018

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RD 19/01/2018