

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Monday, the Twenty Fifth day of June Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice M.V. MURALIDARAN

CRIMINAL MISCELLANEOUS PETITION No.572 of 2018

IN CRL A.35/2018

RAJKANNAN

[PETITIONER / APPELLANT]

Vs

THE STATE OF TAMIL NADU, [RESPONDENT]
REP BY THE INSPECTOR OF POLICE,
SOORAMANGALAM,
ALL WOMEN POLICE STATION,
SALEM DISTRICT
CR.NO.13 OF 2014.

Petition praying that in the circumstances stated therein the High Court will be pleased to suspend the sentence passed by the Learned Sessions Judge Mahila Court Salem in Spl.S.C.No.2 of 2015 dated 27.12.2017 and enlarge the petitioner on bail pending the disposal of the above Criminal Appeal No.35 of 2018. [IN CRL.MP.NO.572 OF 2018]

Order : This petition coming on for orders upon perusing the petition and upon hearing the arguments of M/S.M.DEVARAJ, Advocate for the petitioner and of M/S.T.P.SAVITHA, Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

This Miscellaneous Petition has been filed by the petitioner/accused to suspend the sentence imposed against him in Spl.S.C.No.2 of 2015 on 27.12.2017 by the learned Sessions Judge, Mahila Court, Salem and enlarge him on bail, pending disposal of Crl.A.No.35 of 2018.

2. The petitioner/accused has been convicted for the offence under Sections 417, 406, 506(1) IPC and Section 10 of POCSO Act, 2012 and sentenced to undergo imprisonment as follows:

Sl.No	Offences	Sentence, Imprisonment and Default Punishment
1.	Section 417 IPC	One year Rigorous Imprisonment with a fine of Rs.10,000/- in default to undergo three months Simple Imprisonment

2.	Section 406 IPC	Three years Rigorous Imprisonment with a fine of Rs.1,00,000/- in default to undergo six months Simple Imprisonment
3.	Section 506(i) IPC	Two years Rigorous Imprisonment with a fine of Rs.10,000/- in default to undergo six months Simple Imprisonment
4.	Section 10 of POCSO Act	Five years Rigorous Imprisonment with a fine of Rs.25,000/- in default to undergo three months Simple Imprisonment

Against the conviction and sentence, the petitioner has preferred an appeal CrI.A.No.35 of 2018, along with which, the present miscellaneous petition has been filed, seeking suspension of the sentence awarded.

3. The case of the prosecution is that P.W.1 in this case got separated from her husband in the year 2006 and started living separately along with her daughter / P.W.2 (minor). The petitioner/accused herein was the Manager in the company, in which, P.W.1 was employed and he, taking advantage of her pitiable situation and suppressing his earlier marriage, had married P.W.1 on 27.05.2010 in Koniamman Temple in the presence of P.W.2. It is further alleged that he had also received 30 sovereigns of jewels and a cash of Rs.2,00,000/- from P.W.1 for business purpose. It is also alleged that when P.W.2 was alone and P.W.1 had gone to the shop, the petitioner / accused started misbehaving with P.W.2 by pulling her hand and the P.W.1, upon return and noticing the same, condemned the act of the accused, for which, the accused threatened to kill her and the jewels and cash received from P.W.1, were refused to be handed over by the accused. Based on the complaint lodged by P.W.1, a case in Crime No.13 of 2014 came to be registered against the accused and the Trial Court, after considering the oral and documentary evidence, convicted the accused for the offences as stated supra.

4. Learned counsel for the petitioner / appellant would submit that the FIR in this case was registered after a lapse of 103 days and the entire case of the prosecution is a concocted story based on surmises. Further, it is the admission of P.W.1 herself that a sum of Rs.6,00,000/- is payable by the accused to her, which itself would go to show that the case has been registered for the alleged misappropriation of amount and jewels and not for the one as alleged by the prosecution. He would further submit that the defence witness had clearly deposed that the accused was 40kms away at the time of occurrence alleged to have taken place. Contending that the entire case is a fabricated one, it is prayed that the petitioner is entitled to the grant of suspension of sentence.

5. On the other hand, the learned Government Advocate (CrI.Side) has strongly opposed this petition stating that the petitioner/accused, on coming to know of P.W.1's separation from her husband and through his deceitful words, married P.W.1 in the presence of P.W.2, a minor daughter of P.W.1, without disclosing

his previous marriage to her and after marriage, he used to assault P.W.1 in a drunken mood and give sexual torture to the minor girl. Learned Government Advocate (Cr1.Side) has further contended that the prosecution has proved the guilt of the accused beyond reasonable doubt and in fact, the accused himself admitted the commission of offence committed by him before P.W.7. The Trial Court, on the basis of the incriminating materials against the petitioner/accused, has rightly convicted him and therefore, the accused is not entitled to the grant of suspension of sentence, as he has committed a serious offence of sexual assault on a minor girl, besides cheating P.W.1 and therefore, the petition is liable to be dismissed.

6. In the light of the submissions made on either side hereinabove, taking into account the fact that the accused is in jail for the past six months; that according to the learned counsel for the petitioner, he has got some arguable points in the appeal and also the fact that the appeal is not likely to be heard in the near future, this Court is inclined to grant suspension of the sentence to the petitioner / sole accused.

7. In the result,

a) this petition is ordered;

b) the sentence imposed against the petitioner in Spl.S.C.No.2 of 2015 on 27.12.2017 by the learned Sessions Judge, Mahila Court, Salem, is suspended till the disposal of Criminal Appeal No.35 of 2018;

c) the petitioner shall be released on bail on his executing a bond for a sum of Rs.10,000/- and two sureties each for a likesum to the satisfaction of the learned Judicial Magistrate (Additional Fast Track Court) Salem;

d) and on further condition that he shall appear before the said Court weekly twice, viz., on the first and last working days of every week at 10.30 a.m until further orders.

-sd/-
25/06/2018

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,
MAHILA COURT, SALEM.

2 THE JUDICIAL MAGISTRATE,
[ADDITIONAL FAST TRACK COURT], SALEM.

3 THE CHIEF JUDICIAL MAGISTRATE
SALEM [FOR INFORMATION]

4 THE INSPECTOR OF POLICE,
SOORAMANGALAM ALL WOMEN POLICE STATION,
SALEM DISTRICT.

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

+1C.C. to M/S.M.DEVARAJ Advocate on payment of necessary
charges SR NO.11447

Order

in
CRL MP.572/2018

in
CRL A.35/2018

Date :25/06/2018

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MK:27/06/2018