



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Tuesday, the Sixth day of February Two Thousand Eighteen

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PRESENT

The Hon`ble Mr.Justice A.M.BASHEER AHAMED

CRL MP (MD) No.9343 of 2017

IN

CRL A (MD) No.408 of 2017

1 ASHIQ MEERA
2 DYFI SARAVANAN
3 MAIMOON SHARIBA

... PETITIONERS/ACCUSED No.1,3 & 4

Vs

THE STATE REP.BY,
THE INSPECTOR OF POLICE,
PONMALAI ALL WOMEN POLICE STATION,
TIRUCHIRAPPALLI DISTRICT.
(CRIME NO.10 OF 2014).

... RESPONDENT/COMPLAINANT

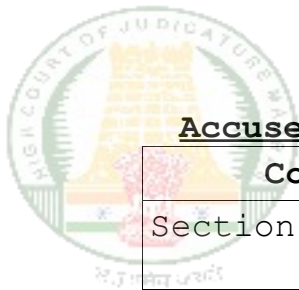
Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed by the Judgment dated 15.09.2017 made in S.C.No.45 of 2016 on the file of the Sessions Judge, Mahila Court, Tiruchirappalli and enlarge the petitioners on bail pending disposal of the above appeal and thus render justice.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.M.AJMAL KHAN, Senior Counsel for AJMAL ASSOCIATES, for the petitioners and of Not appeared on behalf of the Respondent, the court made the following order:-

[Orders Reserved On 26.10.2017]

The petitioners herein are arrayed as A1, A3 and A4 respectively in S.C.No.45 of 2016, on the file of the learned Sessions Judge, Mahila Court, Tiruchirappalli. There are totally 4 accused in the said case. The trial Court framed charges against A1 for the offences punishable under Sections 120-B, 313, 417, 376, 496 and 506(i) r/w.34 IPC and Against A2 & A4, for the offences punishable under Sections 120-B, 506(i) r/w 34 and 109 of IPC.

2.After completion of trial, the said Court has convicted A1, A3 and A4 and sentenced them as under:-

**Accused No.1**

Conviction	Sentence
Section 313 IPC.	10 Years R.I., + Fine of Rs.20,000/- i/d 3 Years S.I.
Section 417 IPC.,	1 Year R.I
Section 496 IPC.,	7 Years R.I., + Fine of Rs.10,000/- i/d 3 years S.I.
Section 376 IPC.,	10 Years R.I., + Fine of Rs.20,000/- i/d 3 years S.I.
Section 506(i) IPC.,	2 Years R.I.,

Accused Nos.3

Section 506(i) of IPC.,	2 Years R.I.
Section 496 r/w.109 of IPC.,	7 Years R.I., + Fine of Rs.5,000/- i/d 2 years imprisonment.

Accused No.4

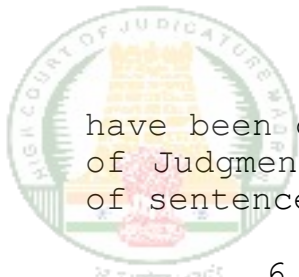
Conviction	Sentence
Section 506(i) of IPC.,	2 Years R.I.
Section 496 r/w.109 of IPC.,	7 Years R.I., + Fine of Rs.5,000/- i/d 3 years S.I.
Section 313 r/w.109 of IPC.,	10 Years R.I., + Fine of Rs.10,000/- i/d 3 years imprisonment.

3. The total fine amount imposed on A1 is Rs.50,000/-; for A3, Rs.5,000/- and for A4, Rs.15,000/- The above sentences of imprisonment are ordered to run concurrently. A1 was further directed to deposit a compensation amount of Rs.10,00,000/-, under Section 357 of Cr.P.C., to P.W.1, for the growth of the child born to P.W.1, by A1, before the trial Court.

4. Aggrieved by the Judgment and Conviction of the trial Court, dated 15.09.2017, the petitioner / accused preferred the present Criminal Appeal before this Court. The fine amount imposed by the trial Court has been paid by the accused. The 2nd accused in this case had preferred an Appeal in CrI.A.(MD)No.371 of 2017, before this Court and sentence of imprisonment imposed against A2 was suspended by this Court in its order, dated 20.09.2017, in CrI.M.P(MD)No.8562 of 2017 and the said Criminal Appeal is pending. The petitioners herein filed the present petition, seeking suspension of sentences during pendency of the present Criminal Appeal.

<https://hcservices.ecourts.gov.in/hcservices/>

5. Admittedly, A1 has not deposited the compensation of Rs.10,00,000/-, before the trial Court, as ordered. The accused



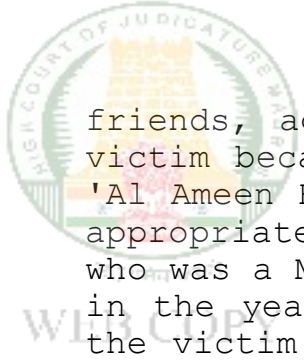
have been confined in Central Prison, Tiruchirappalli, from the date of Judgment. A3 has filed the impugned application for suspension of sentence for himself and on behalf of A1 & A4 in this case.

6. Mr.M.Ajmal Khan, the learned Senior Counsel appearing for the petitioners / appellants would contend that the conviction of the appellants herein by the trial Judge is purely on conjunctures and surmises and not supported by legally acceptable evidence; the offence under Section 376 IPC., is not made out even according to the case of the prosecution, for the simple reason that there was a consensual sexual intercourse between the defacto complainant and A1 and as such, the parties are majors; that the offence under Section 417 IPC., is also not made out for the simple reason that there was no representation leading to the defacto complainant acting on the same such as by delivering a property in view of the said representation; that the offence under Section 496 IPC., is not made out, as A1 did not have any sexual intercourse on the pretext of the husband of the defacto complainant; that no witnesses were examined by the prosecution regarding the involvement of A1, A3 and A4 in the alleged abortion committed by the defacto complainant; that A1 or A4 have never and ever accompanied with the defacto complainant to the hospital for the purpose of abortion; that P.W.15/Doctor has not deposed that A1 either brought the defacto complainant or asked her to abort the child and hence, the conviction of A1 & A4, under Section 313 IPC., is without evidence; that P.Ws.1 & 2 are interested witnesses and A2 to A4 were convicted for the simple reason that they happened to be the relative and friends of A1.

7. Per contra, Mr.T.Mohan, the learned Additional Public Prosecutor appearing for the respondent would submit that the offences committed by the petitioners / accused are clearly proved by the witnesses beyond any doubt and the trial Court has rightly convicted the petitioners / accused, on appreciating of evidence produced by the prosecution. The offences committed by the petitioners / accused are very seriously affecting the life of the children and the petitioners / accused are not having any *prima facie* case in this appeal and also for grant of suspension of sentence. The learned Additional Public Prosecutor in support of his contentions, has relied on the Judgment of the Hon'ble Apex Court in **State of U.P. Vs. Naushad** reported in **(AIR 2014 SC 384)**.

8. Perused the materials on record. Heard and considered the rival submissions advanced by either side.

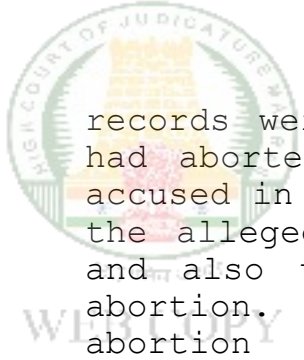
9. The case of the prosecution is that the first accused loved the victim and due to persistent and persuasions of the first accused, the victim fell as prey and the first accused added a dollar in her chain on 14.12.2006, at a Pillayar Temple, opposite to Mangal and Mangal Store, Tiruchirappalli and made her to believe that such event as marriage between them was held and had sexual intercourse with her on the same day in the house of his



friends, against her wishes and thereafter, in the year 2007, the victim became pregnant and the victim was forced to do abortion at 'Al Ameen Hospital' by suggesting to do register the marriage in an appropriate time and after that it can be informed to Al's father, who was a Minister. The victim became pregnant for the second time, in the year 2011 and Al married a Muslim girl with the consent of the victim by stating that, unless he got married, he get no money and so he has to marry, as per his father's will and also he may be given Deputy Mayor Post, due to his father's death. The victim was again forced to do abortion at 'Rohaiya Salma Hospital' and thereafter, Al got Deputy Mayor Post and the victim became pregnant for the 3rd time. Though the Accused No.1 threatened the complainant through his friends to leave him by accepting money, the victim firmly stood for her life and try to commit suicide and got set back in her health and got aborted. After giving complaint to the Police Commissioner, as per the advise of the Commissioner, Al and the victim lived together in a separate home only for two months. Again, the victim became pregnant for the 4th time and A4 threatened the victim for the life and the attempt made by the victim to abort is failed and gave birth a female child and thereafter, FIR was registered, on the basis of the complaint given by the victim, for the offences under Sections 313, 417, 376 and 506 (i) IPC.

10. Al in this case is the son of one Late.Mariyam Pichai, Minister of Tamil Nadu State Government, who died latter in an accident. During his life time, Al loved the victim, who was working in a private Bank and due to lover affairs between Al and the victim, Al made the victim to believe her by adding a dollar in the chain owned by the victim before the Vinayagar Temple, with a letter imprinted as 'A' in the said dollar and Al told the victim that he was her husband and the first time in the year 2006, after the alleged marriage, he forced the victim to have sexual intercourse and thereafter, giving a false promise to register the marriage, Al was having sexual intercourse several times with the consent of the victim girl. Thereafter, the victim became thrice and with the knowledge of Al, victim aborted her foetus thrice in the Hospitals viz., 'Al Ameen Hospital', ' 'Rohaiya Salma Hospital' and 'Al Ameen Hospital' respectively.

11.The above facts came to light from the evidence of the victim / P.W.1 and her mother / P.W.2 during their evidence. The victim and Al were living together in a separate home, as per the evidence of prosecution witness. Al belongs to Muslim and the victim belongs to Hindu. Believing the relationship between Al and the victim stating as husband and wife, the victim was having physical contact with the first accused on several occasions, with her consent, on the false promise of Al to register the marriage. Al was having sexual intercourse on several occasions and the victim became pregnant and also the victim had undergone abortion thrice, as per the evidence of P.Ws.1 and 2 in this case. However, no



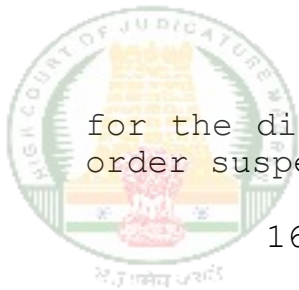
records were produced by the prosecution to prove that the victim had aborted thrice with the help and assistance of A1 and other accused in this case. Prosecution did not take any steps to examine the alleged hospitals authorities to prove the factum of abortion and also the presence of the petitioners during the process of abortion. Hence, the involvement of A1, A3 and A4 in the alleged abortion committed by the defacto complainant / P.W.1 is on suspicious circumstances, as contend by the petitioners herein. The involvement of A3 and A4 in commission of offences under Sections 496 & 506(i) IPC., is also not proved by other witnesses by the prosecution, as contended by the petitioners herein.

12. Hence, this Court finds that there are *prima facie* case in this appeal only in respect of the offences punishable under Sections 313, 506(i) and 496 r/w 109 IPC., against A3 & A4 and under Section 313 IPC., against A1. The DNA test conducted in this case upon the victim / A1 and her daughter proved the fact that A1 is the biological father of the child / daughter, born to the victim, who had physical contact with A1 on several occasions, under misconception of her marriage with the first accused herein.

13. The first accused was found guilty of committing rape on prosecutrix / victim / defacto complainant, under misconception of fact that he would marry her and register the alleged marriage. A1 had committed sexual intercourse with the victim / P.W.1 by giving such false promise, but after the victim got pregnant and delivered the child, the first accused refused to do so. Consent was obtained from the victim under a misconception of fact. Thus, the alleged consent said to have obtained by the first accused was not voluntary consent and this Court is of the view that the accused indulged in sexual intercourse with the victim by misconceiving to her true intention, made a false promise to her and he never aim to marry her. The Judgment relied on by the learned Additional Public Prosecutor reported in **(AIR 2014 SC 384)** (cited supra) is squarely applicable to the facts of the present case on hand.

14. Considering the above facts and circumstances of the case and the offences committed by A1 in breach of trust, the offences under Sections 376 and 417 of IPC., are very grave in nature, this Court is not inclined to suspend the sentence against A1. Hence, this Criminal Miscellaneous Petition is dismissed only in respect of A1.

15. However, considering the above facts and circumstances of the case and the judgment of the trial Court and also the contentions raised by the appellants in the appeal, I am of the view that certain eminently arguable points are involved in the criminal appeal. They are required to be examined in detail in the main criminal appeal. Further, it will take some time for the disposal of the criminal appeal. They are required to be examined in detail in the main criminal appeal. Further, it will take some time



for the disposal of the criminal appeal, this Court is inclined to order suspension of sentence only in respect of A3 and A4.

16. On considerations, ordered as under:

(i) Appeal bail granted.

(ii) Substantial sentence alone is suspended on condition that the each petitioners shall execute a bond for Rs.15,000/- (Rupees Fifteen thousand only) with two sureties for the like sum each to the satisfaction of the learned Judicial Magistrate No.V, Tiruchirappalli.

(iii) The petitioner shall appear before the said Court monthly twice ie., on the 1st and 15th working day of every English Calender Month at 10.30 a.m., until further orders.

sd/-

06/02/2018

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

1 THE SESSIONS JUDGE, MAHILA COURT, TIRCHIRAPPALLI.

2 THE JUDICIAL MAGISTRATE NO.V, TIRUCHIRAPPALLI.

3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, TIRUCHIRAPPALLI.

4 THE INSPECTOR OF POLICE, PONMALAI ALL WOMEN POLICE STATION,
TIRUCHIRAPPALLI DISTRICT.

5 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY.

6 THE ADDITIONAL PUBLIC PROSECUTOR
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.AJMAL ASSOCIATES, Advocate SR.No.2001

ORDER

IN

CRL MP(MD) No.9343 of 2017

IN

CRL A(MD) No.408 of 2017

Date : 06/02/2018