

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Fourteenth day of March Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.2663 of 2019

IN CRL.A.NO.106 OF 2019

SIVARAJ

[PETITIONER]

Vs

STATE REP. BY
INSPECTOR OF POLICE,
PALACODE POLICE STATION,
DHARMAPURI DISTRICT.
(CR.NO.360 OF 2014)

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.106/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed by the Sessions Judge (Fast Track Mahila Court) Dharmapuri in S.C.No.109 of 2015 by judgement dated 18.01.2017 and enlarge the petitioner on bail pending disposal of the above appeal

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.106/2019 on the file of the High Court and upon hearing the arguments of M/S.R.JOHN SATHYAN Advocate for the petitioner and of MR.R.PRATHAP KUMAR Advocate on behalf of the Respondent, the court made the following order:-

[Order of the Court was made by M.SATHYANARAYANAN, J.,]

The petitioner is arrayed as A-1 out of 2 accused in SC.No.109/2015 on the file of the Fast Track Mahila Court, Dharmapuri and he along with A-2 were charged and tried for the commission of the following offences:-

Rank of the Accused	Charges Framed under sections
A-1	354 [6 counts] ; 354[b] - 6 counts ; 354 [c] - 6 counts ; 376 [6 counts] ; 506[ii] IPC & Section 4 of the Tamilnadu Prohibition of Harassment of Women Act, 1998 [6 counts] & section 66[e] - 6 counts ; 67[A] - 6 counts of Information Technology Act, 2000.
A-2	292 IPC [6 counts] ; 66[b] and 67 [A] - 6 counts of the Information Technology Act, 2000.

2 The Trial Court, vide impugned judgment dated 18.01.2017, had convicted and sentenced the accused as follows:-

Rank of the Accused	Conviction under section	Sentence Awarded
A-1	376 IPC [4 counts]	To undergo rigorous imprisonment for life and to pay a fine of Rs.1000/- with a default sentence of 2 months rigorous imprisonment for each count.
	66[E] of the Information Technology Act, 2000 [4 counts]	To undergo rigorous imprisonment for 2 years and to pay a fine of Rs.10000/- with a default sentence of 4 months rigorous imprisonment for each count.
	67[A] of the Information Technology Act, 2000 [4 counts]	To undergo rigorous imprisonment for 3 years and to pay a fine of Rs.50000/- with a default sentence of 6 months rigorous imprisonment for each count.

Insofar as the rest of the offences/charges are concerned, A1 was found not guilty

Rank of the Accused	Conviction under section	Sentence Awarded
A-2	292 IPC	To undergo rigorous imprisonment for 1 year and to pay a fine of Rs.1000/- with a default sentence of 2 months rigorous imprisonment.
	66[B] of the Information Technology Act, 2000	To undergo rigorous imprisonment for 2 years and to pay a fine of Rs.10000/- with a default sentence of 4 months rigorous imprisonment.
	67[A] of the Information Technology Act, 2000	To undergo rigorous imprisonment for 3 years and to pay a fine of Rs.50000/- with a default sentence of 6 months rigorous imprisonment.

The period of incarceration already undergone by them, were ordered to be set off u/s.428 Cr.P.C., and the sentences were also ordered to run concurrently. Challenging the conviction and sentence, the petitioner/A-1 has preferred the present criminal appeal and pending disposal of the present appeal, came forward to file the present miscellaneous petition seeking suspension of substantive sentences of imprisonment.

3 A perusal of the impugned judgment would disclose the following facts.

The petitioner/appellant/A-1 is a moneylender and he also owns a tamarind grove at Kuppan Kottai and also a Farmhouse located in the said grove. A-2 runs a Mobile Phone Repair shop in the name and style 'Captain Mobile Shop'. The modus operandi adopted by the petitioner/appellant/A-1 is that he lured women in lieu of offering loans at meagre rate of interest and prior to three months on 06.10.2014 and he lured 29 women including P.Ws.2 to 5 as well as one Anitha and made them to visit his Farmhouse for the purpose of getting loan at meagre interest rate and he sexually exploited them and also raped them and at the same time, also videographed the entire incident without their knowledge and thereafter, showed the recording to them and also threatened them to post the said videos and photos in the social media, if they fail to turn out and having left with no other option, they went and as a result, the petitioner/appellant/A-1 repeatedly raped them. The mobile phone of the petitioner/appellant/A-1 got repaired and therefore, he has given the phone for service to A-2 and A-2 while repairing the same, came across the contents that were stored in the memory card and he downloaded it ; burnt the files and copied the videos in Compact Discs and made several copies with an intention to make money by selling them and it was also sold to P.Ws.7 and 8. The case registered by the Palacode Police Station in that regard, has culminated into a charge sheet, which was taken on file and after investigation, the Final Report was filed and after committal, the

case was made over to the Trial Court, who after fullfledged trial, has convicted and sentenced the petitioner / appellant / A-1 as stated above.

4 Mr.R.John Sathyan, learned counsel for the petitioner/appellant/A-1 would submit that admittedly, P.Ws.2 to 5 are married women and they voluntarily consented to have physical relationship with the petitioner/appellant/A-1 and assuming for the sake of argument that the intimate moments were videographed by the petitioner/appellant/A-1, it was only for his personal use and as such, he ought not to have been prosecuted for the offences for which he was charged. It is his further submission that even according to the prosecution, the mobile phone owned by the petitioner/appellant/A-1 was said to have been given for repair to A-2 who had downloaded the said pictures/videos from the memory card and thereafter, burnt it to files and converted into CDs and sold to P.Ws.7 and 8 and as such, the petitioner/appellant/A-1 cannot be prosecuted for the said offences. It is also the submission of the learned counsel for the petitioner/appellant/A-1 that the victims, viz., P.Ws.2 to 5 has refused to undergo medical examination and except their self serving testimonies, the alleged offences said to have been committed by the petitioner/appellant/A-1 have not been proved through any tenable evidence and also not supported by scientific evidence and since the chance of success is very bright, prays for suspension of the substantive sentence of imprisonment of the petitioner/appellant/A-1.

5 **Per contra,** Mr.R.Prathap Kumar, learned Additional Public Prosecutor would submit that the petitioner/appellant/A-1 by luring the victims on the pretext of giving loan with meagre interest, had sexually exploited them and in the process, took videographs of the intimate moments and thereafter, started blackmailing them and using the said modus operandi, repeatedly raped the victims. Since the testimonies of the victims are trustworthy and cogent, that would be sufficient to convict the petitioner/appellant/A-1 for the offence u/s.376 IPC. Learned Additional Public Prosecutor has also drawn the attention of this Court to the impugned judgment and would submit that the Trial Court, on an indepth analysis of the oral and documentary evidences and other materials, had rightly reached the conclusion to convict and sentence the petitioner/appellant/A-1 and from the discussion made in the impugned judgment it also appears that the petitioner/appellant/A-1 is also a sexually psychopath and it is not safe to let him out on bail by suspending the substantive sentences of imprisonment and prays for dismissal of this petition.

6 This Court has considered the rival submissions and also perused the materials placed before it.

7 A perusal of the testimonies of P.Ws.2 to 5 would disclose that the petitioner/appellant/A-1 under the pretext of advancing them loan on a meagre interest, had lured them to his Farmhouse and sexually exploited them and also captured intimate moments through his mobile phone and also threatened the victims that he would upload

them in the social media and using the same modus operandi, he repeatedly raped them. It is to be remembered at this juncture that the victims are married women and if the said fact is made known to the outside world, they will be in social ostracization and the reputation of the family would also come down in the eyes of the society and in fact, the Trial Court has also taken note of the said fact and discussed the same in page Nos.46 and 57 of the impugned judgment. It is also a settled position of law that if the testimonies of the victims inspire the faith and confidence, that can be the sole basis to convict the concerned accused for the commission of the said offence. Though the learned counsel for the petitioner/appellant/A-1 made a valiant effort to convince the Court that the ingredients of the offences for which the petitioner/appellant/A-1 is charged, have not been made out and also urged other points on the basis of the testimonies of the witnesses, this Court is of the considered view that it cannot be done at this stage and the veracity of the witnesses and appreciation of evidence can be done only at the time of final hearing of this appeal.

8 This Court, on a careful consideration and appreciation of the submissions made and on perusal of the impugned judgment, is of the considered view that this is not a fit case wherein the substantive sentences of imprisonment can be suspended in favour of the petitioner/appellant/A-1.

9 In the result, the miscellaneous petition is dismissed.

-sd/-

14/03/2019

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
FAST TRACK MAHILA COURT,
DHARMAPURI

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, VELLORE

4 THE INSPECTOR OF POLICE,
PALACODE POLICE STATION,
DHARMAPURI DISTRICT.

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

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C.C. to M/S.R.JOHN SATHYAN Advocate on payment of necessary charges

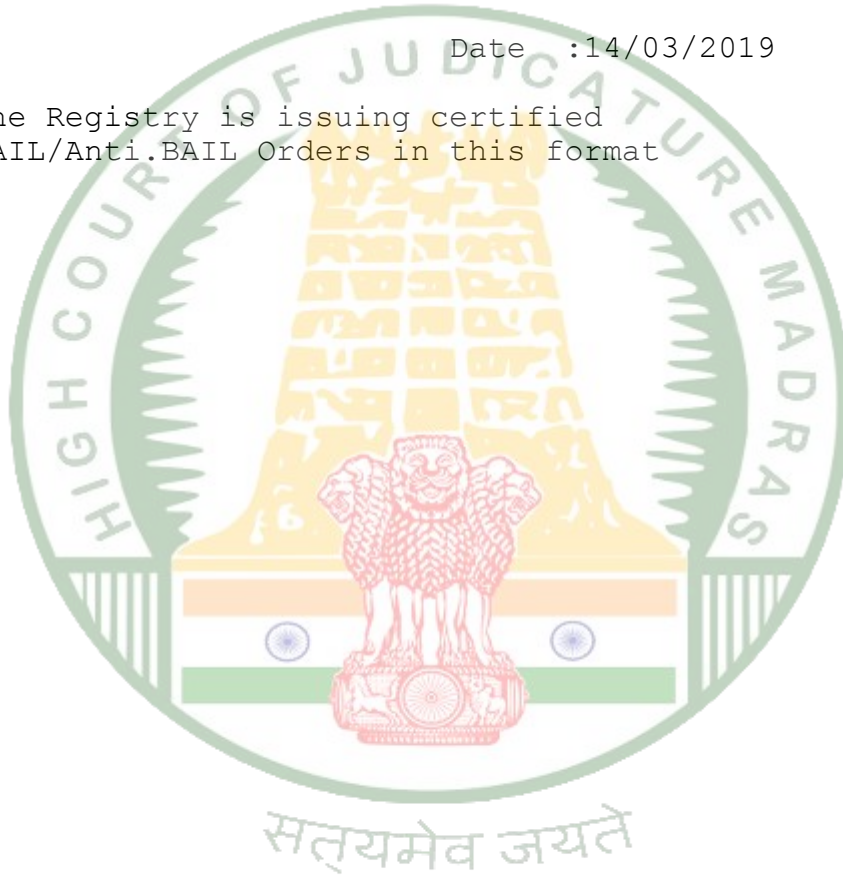
Order

in
CRL MP.2663/2019

IN CRL.A.NO.106 OF 2019

Date :14/03/2019

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RD 21/03/2019



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