

Bail Slip

The Petitioner/Accused namely Kalaivanan, S/o.Ganesan, was directed to be released on bail as per the order of this Court dated 28.08.2012 made in MP.No.1 of 2012 in Cr1.RC.No.926 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.07.2019

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Cr1.RC.No.926 of 2012

Kalaivanan

..Petitioner/Appellant/Accused

Vs.

State by
Inspector of Police,
All Women Police Station,
Nagapattinam District,
Crime No.6 of 2007

.. Respondent/Respondent/Complainant

Prayer Criminal Revision Case filed under Section 397 r/w 401 of Code of Criminal Procedure, to call for the records in C.A.No.77 of 2010 by Judgment dated 29.03.2012 by Sessions Judge, Nagapattinam confirming the conviction and sentence passed in C.C.No.699 of 2017 in Judgment dated 21.07.2010 by the Judicial Magistrate, Sirkali and set aside the same.

For Petitioner : Mr.R.Sivakumar for
M/s.K.M.Vijayan Associates

For Respondent : Mr.T.Shanmugarajendran
Government Advocate (Cr1.Side)

ORDER

The respondent police registered a case against the revision petitioner for the offence under Section 417 and 506(i) IPC, in Crime No.6 of 2007. After investigation, the respondent police laid a charge sheet before the learned Judicial Magistrate, Sirkali, and the learned Judicial Magistrate taken the charge sheet on file in C.C.No.699 of 2007 and framed the charges under Section 417 and 506(ii) IPC, after completing the trial, the learned Judicial Magistrate convicted the petitioner and sentenced him to undergo imprisonment for one year for the offence under Section 417 IPC and one year imprisonment for the offence under Section 506(i) IPC, ordered to undergo sentences

consecutively and also to pay a compensation of Rs.50,000/- to the victim girl.

2 Challenging the said judgment in C.C.No.699 of 2007 passed by the learned Judicial Magistrate, Sirkali the accused filed an appeal before the learned District and Sessions Judge, Nagapattinam in Crl.A.No.77 of 2010. The learned District and Sessions Judge, after hearing the arguments, dismissed the appeal and confirmed the judgment of conviction and sentence passed by the learned Judicial Magistrate. As against the said judgment of the learned District and Sessions Judge, Nagapattinam, the accused has filed the present revision case before this Court.

3 The learned counsel for the revision petitioner would submit that the occurrence took place on 10.09.2007, whereas the complaint was given only on 17.09.2007 and the First Information Report was registered only on 19.09.2007. There is a delay in filing the complaint and the delay in registering the First Information Report, which has not been properly explained and the delay in giving the complaint against the revision petitioner itself creates suspicious. The sister of the defacto complainant is also residing in the same house. It is not possible to have sexual intercourse in the same house in which sister also residing. The defacto complainant foisted false case. There is a material contradictions between P.W.1, P.W.2 and P.W.3. P.W.1 has stated that she has filed the complaint based on the instructions given by her father, whereas, the father of the victim stated that he has given the complaint, which creates doubt. Therefore, the prosecution has not proved its case beyond reasonable doubt. Both the Courts below have failed to consider the facts that P.W.1 lodged the false complaint in order to marry the revision petitioner. In this case, independent witnesses have not supported the case of the prosecution. Further, there is no materials to show that the revision petitioner had a physical relationship with the victim girl. There is no evidence to prove that the revision petitioner made a promise to the victim to marry her. Both the Courts below have erroneously convicted the petitioner, which warrants interference by this Court.

4 The learned Government Advocate (Criminal Side) would submit that P.W.1 is the victim, she has clearly stated that for taking treatment her mother was admitted in Thanjavur Madical College Hospital, and her father also stayed there. At the time, the defacto complainant was alone in her house. The revision petitioner used to go to her house made promise to marry her and had a physical relationship with her. Due to the illegal

relationship, the defacto complainant got pregnant and the same was intimated to the revision petitioner. The revision petitioner promised to marry her and asked to abort the pregnancy and he gave the tablets to her, the victim also took the tablets. After that, the victim came to know about the arrangements made by the revision petitioner's family for his marriage. Thereafter, the victim informed the facts to her parents. After hearing the said incidents the parents of the victim girl went to the house of the revision petitioner and asked the revision petitioner to marry their daughter, but he refused to marry her, and at that time the revision petitioner and his parents and sisters have attacked the victim. The revision petitioner told them, if the victim comes to his house, he will pour kerosene and set fire on her body. Therefore, they made a panchayat in the village, which was also not yielded any result. Hence, the parents of P.W.1 have preferred complaint before All Women Police Station, Sirkali. The prosecution has proved its case beyond all reasonable doubts. There is no reason to interfere with the judgment of both the Courts below.

5 Heard the learned counsel for the revision petitioner and the learned Government Advocate (Criminal Side) appearing for the respondent and perused the materials available on record.

6 The case of the prosecution is that the petitioner is the relative of the victim. In view of such relationship, he used to visit victim's house frequently, on one such occasion he gave a love letter to the victim stating that he would marry her since he is her relative and she also fell in love with the petitioner. From 27.06.2006 the victim's mother/P.W.3 was fell ill and she was admitted in Thanjavur Dr.Rani Hospital. Therefore, the father of the victim also stayed in the hospital along with P.W.3, at the time the petitioner used to visit and stay in the victim's house frequently. On one such occasion he made a false assurance of marrying her and by giving such a false assurance, had a sexual intercourse with the victim. As a result, she became pregnant in the year 2007, at that time, the revision petitioner requested the victim not to inform others he would purchase tablets to abort the same and the victim also took the tablets. P.W.4/Mariammal seen the petitioner along with the victim moving in the bus and other places. Thereafter, the victim came to know that the petitioner's family is arranging marriage to the petitioner. The victim went and questioned the accused on 10.09.2007, at the time, the revision petitioner and his parents and sisters beaten the victim in the road, the victim also made a Dharna in front of the petitioner's house by sitting in the road. Thereafter, P.W.2 and P.W.3 came to know about the above facts. The victim and her parents also

questioned the petitioner at the time the petitioner threatened them that if they talk about the marriage he will kill them by setting fire. Therefore, the victim and others gave a complaint to the panhayatars on 12.09.2007. When elders of the village convened a panchayat, the petitioner refused to attend the panchayat. Therefore, the victim gave a complaint before All Women Police Station, Sirkali.

7 On a perusal of the judgment of both the Courts below, the victim girl was examined as P.W.1 she has clearly narrated the events and also the promise made by the revision petitioner. Since the revision petitioner is her uncle son, he used to visit her house in the absence of her parents. He promised her to marry and had a physical relationship with her. Subsequently, she got conceived, when the same was informed to the revision petitioner he asked her to abort the pregnancy, she also accepted the same and took tablet. Thereafter, the petitioner refused to marry her. The petitioner's family arranged marriage for the revision petitioner with another girl, the victim informed the facts to her parents and questioned the same to the revision petitioner, he refused to marry her. Hence, the parents of the victim informed to P.W.6, and he conducted panchayat.

8 P.W.2 is the father and P.W.3 is the mother of the victim/P.W.1 and they corroborated the evidence of P.W.1. P.W.4 and P.W.5 are the independent witness. P.W.4 has stated that she had seen the revision petitioner along with the victim girl and they used to visit some places. P.W.5, is the brother of P.W.3 he also aware of the love affair between P.W.1 and the petitioner and he also seen both of them moving together in Mayiladuthurai. When he questioned both of them told him that they would marry each other. Thereafter he also came to know that the accused refused to marry the victim. P.W.6 is the resident of Sandhaiveli Street and P.W.1 and P.W.2 came and informed him that the accused had a sexual intercourse with P.W.1, thereafter, he refused to marry her. Therefore, P.W.6 convened a panchayat.

9 On reading of the evidence of P.W.1 to P.W.7 it is proved that the revision petitioner is the relative to the victim girl and he made a promise to marry her and had a physical relationship with her. Subsequently, he refused to marry her and tried to marry another girl. The prosecution has proved its case beyond reasonable doubt and there is no reason to discard the evidence of P.W.1. On combined reading of the evidences of P.W.1, P.W.6 one who conducted Panchayat and the Doctor, it clearly shows that the revision petitioner has

committed the offence under Sections 471 and 506(i) IPC. Hence, there is no reason to interfere with the judgment of both the Courts below.

10 This Court as a revisional Court, while exercising the revisional jurisdiction, has to see whether any perversity in appreciation of the evidence in deciding the case by the Courts below. On reading of the entire records, this Court does not find any perversity in the appreciation of the evidence, while convicting the petitioner. Under these circumstances, this court finds that there is no reason to interfere with the judgments of the Courts below and there is no merit in the revision case.

11 At this juncture, the learned counsel for the revision petitioner submitted that the revision petitioner and the victim got married with different persons and living separately and hence, the sentence may be modified. Considering the said submission and in the interest of justice, this Court is inclined to modify the sentence from one year to six months, which will meet the ends of justice. At the same time, the compensation amount awarded by the Courts below for a sum of Rs.50,000/- is increased to Rs.1,00,000/-. The revision petitioner is directed to deposit the compensation of Rs.1,00,000/- before the trial Court within a period of one month from the date of receipt of copy of this order.

12 After depositing the compensation, the victim girl shall receive the compensation amount from the trial Court. The learned Judicial Magistrate is directed to secure the revision petitioner to undergo the remaining period of sentence, if any.

13 Accordingly, this Criminal Revision Case is partly allowed with the above modifications.

Sd/-

सत्यमेव जयते
Assistant Registrar (JJ Act)

/True Copy/

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Sirkali.

2.The Sessions Judge,
Nagapattinam.

3.The Chief Judicial Magistrate,
Nagapattinam.

4.The Superintendent,
Central Prison, Trichy.

5.The District Collector,
Nagapattinam,

6.The Inspector of Police,
All Women Police Station,
Nagapattinam District.

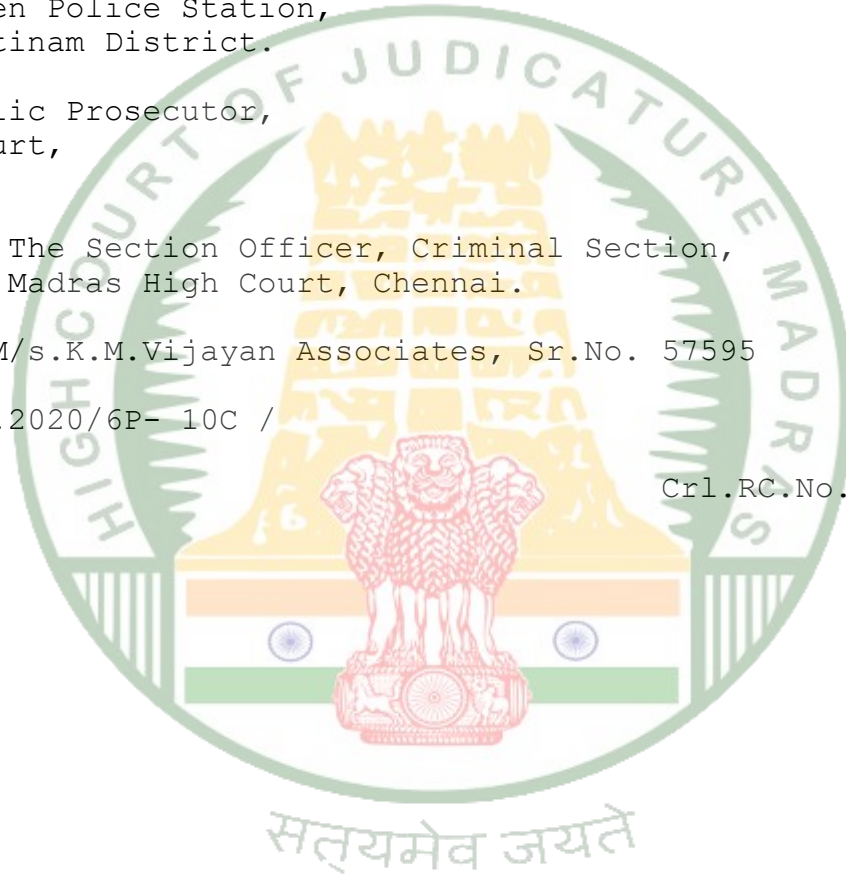
7.The Public Prosecutor,
High Court,
Madras.

Copy to : The Section Officer, Criminal Section,
Madras High Court, Chennai.

+1 cc to M/s.K.M.Vijayan Associates, Sr.No. 57595

AKM/10.02.2020/6P- 10C /

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