

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twelfth day of July Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M.M.SUNDRESH

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.8222 of 2019

IN CRL.A.NO.366 OF 2019

DINESH BABU

[PETITIONER]

Vs

THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
SETHIATHOPE,
CUDDALORE DISTRICT.
CR.NO.7 OF 2016

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.366/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner by order dated 01.02.2019 in SC No.160 of 2017 on the file of the learned Sessions Judge, Mahila Court, Cuddalore release the petitioner on bail till the disposal of the above Crl.A.No.366 of 2019

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.366/2019 on the file of the High Court and upon hearing the arguments of M/S.R.C.PAUL KANAGARAJ Advocate for the petitioner and of MR.R.PRATHAP KUMAR Additional Public Prosecutor on behalf of the Respondent the court made the following order:-

(Order of the Court was made by M.M.SUNDRESH,J)

The petitioner is the sole accused and charged for the offence punishable under Sections 376(2)(1) and 294(b) IPC in S.C. No. 160 of 2017 on the file of Sessions Judge, Mahila Court, Cuddalore. The trial Court, by judgment, dated 01.02.2019, accepting the evidence of P.W.7 who is the victim, and that of P.W.6 convicted the petitioner for the offence under Section 376(2)(1) IPC and sentenced to undergo life imprisonment and to pay a fine of Rs.25,000/-, in default, to undergo one year simple imprisonment and for the offence punishable under Section 294(b) IPC, sentenced to undergo rigorous imprisonment for a period of three months and to pay a fine of Rs.1,000/-, in default, to undergo simple imprisonment for a period of fifteen days. Seeking suspension of sentence, the present petition has been filed.

2. The learned counsel appearing for the petitioner submitted that even as per the case of the prosecution, the victim girl is a mentally de-ranged and therefore there is no question over her capacity to understand and depose. He has also stated that she has sustained injuries by falling down. The evidence of P.W.6 has been misconstrued. P.W.6, who is a Doctor, has only stated that it is possible that there must be a sexual assault. There is also a civil dispute between the families of P.W.7 and the petitioner. The petitioner has been in incarceration for more than five months. Therefore, the suspension of sentence petition will have to be allowed.

3. The learned Additional Public Prosecutor appearing for the State submitted that the trial Court took into consideration the evidence of witnesses P.W. 6 and P.W.7 and rightly convicted the petitioner. Thus, this petition will have to be dismissed.

4. We have perused the evidence adduced. Admittedly, P.W.7 is a mentally de-ranged person and as per the evidence of P.W.6, it appears that the sexual assault could have happened. On examination of P.W.7, no sperm was found. P.W.2 also speaks about the motive. The victim has also completed B.Com. The petitioner is in incarceration for more than five months. We do feel that there are arguable points available in the appeal.

5. Considering the above, the substantive sentence of imprisonment alone is suspended on condition that the petitioner executes a bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of District Munsif cum Judicial Magistrate, Kattumannarkoil, Cuddalore District and on further condition that the petitioner shall appear before the said Court on the first working day of every month at 10.00 a.m., pending appeal.

-sd/-

12/07/2019

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 DISTRICT MUNSIF CUM
JUDICIAL MAGISTRATE,
KATTUMANNARKOIL, CUDDALORE DISTRICT

2 THE CHIEF JUDICIAL MAGISTRATE
CUDDALORE [FOR INFORMATION]

3 THE SESSIONS JUDGE
MAHILA COURT, CUDDALORE

4 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

6 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
SETHIATHOPE,
CUDDALORE DISTRICT.

+1 C.C. to M/S.R.C.PAUL KANAGARAJ Advocate on payment of
necessary charges SR.NO. 14231

Order

in

CRL MP.8222/2019

IN CRL.A.NO.366 OF 2019

Date :12/07/2019

From 7.2.2001 the Registry is issuing certified
copies of the BAIL/Anti.BAIL Orders in this format
RD 12/07/2019

सत्यमेव जयते

WEB COPY