

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Sixth day of February Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.8467 of 2018

IN CRL.A.No.354 OF 2018

KARTHICK

[PETITIONER]

Vs

STATE REP. BY

[RESPONDENT]

INSPECTOR OF POLICE,
P6, KODUNGAIYUR POLICE STATION,
CHENNAI-600 118.
CR.NO. 1218/2013

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.No.354 OF 2018 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner in conviction Judgement in SC No. 34/2015 dated 19.3.2018 passed by the Honble Sessions Judge, Mahila court, Chennai and enlarge the petitioner on bail pending disposal of CRL.A.No.354 OF 2018.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.No.354 OF 2018 on the file of the High Court and upon hearing the arguments of M/S.B.MAHESWARAN, Advocate for the petitioner and of MR.PRATHAPKUMAR ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

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

The sole accused, who was convicted for the commission of offence under Sections 341 and 302 I.P.C. and imposed with sentence of rigorous imprisonment for life and to pay a fine of Rs.10,000/- in default to undergo 6 months simple imprisonment for the offence under Section 302 IPC and 1 month simple Imprisonment for the commission of offence under Section 341 IPC, vide impugned Judgment dated 19.03.2018 in S.C.No.34 of 2015, had preferred this appeal and pending disposal of the same, came forward to file this miscellaneous petition praying for suspension of sentence.

2. The learned counsel appearing for the petitioner / appellant would submit that though it is the case of the prosecution that the petitioner / appellant poured kerosene upon the deceased viz., Usha and set fire, from the materials available, it is a case of suicide and that apart, there is no marital relationship between the petitioner and the deceased and the motive projected by the prosecution is also very flimsy and the Trial Court, without proper appreciation of oral and documentary evidence, has erroneously reached a conclusion to convict and sentence the petitioner / appellant and would further add that he is having bright chance of success in this appeal and prays for suspension of sentence.

3. *Per contra*, Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the respondent would submit that the statement of the victim was recorded by police officials, based on which, an F.I.R. came to be registered and it is followed by judicial dying declaration and both corroborate each other on all material particulars and the points urged by the learned counsel appearing for the petitioner/appellant can be adjudicated only during the course of appeal and prays for dismissal of this appeal.

4. This Court has carefully considered the rival submission and also perused the materials placed before it.

5. The deceased was aged about 27 years and due to the marital relationship with one Ginjith, they got son and daughter and thereafter, her husband divorced her and in order to eke out her livelihood, she started working in an Export Company at Ambattur and later she got acquaintance with the appellant and started to live together. On 09.07.2013 at 06.00 p.m, appellant came in a drunken mood and had wordy altercation, followed by which the petitioner / appellant poured kerosene upon the victim viz., Usha and set her fire by using match stick and she was admitted in the hospital on 10.07.2013 and without responding to treatment, she died on 12.07.2013.

6. It is also to be pointed out at this juncture that P.W.12, who was working as the Sub Inspector of Police, P6 Kodungaiyur P.S., on 10.07.2013, on receipt of intimation from the Burn Injuries Ward of Kilpauk Medical College Hospital, went to the Hospital and recorded the dying declaration, based on which, a case in Crime No.1218 of 2013 came to be registered for the commission of offence under Sections 341 and 302 IPC and subsequent to her demise, altered the report and contents of the said statement would also disclose that it was the petitioner / appellant, who poured kerosene upon the victim and set to her on fire.

7. The XVI Metropolitan Magistrate, George Town, Chennai, on receipt of the intimation, has also went to the hospital and after ascertaining the mental capability and physical condition of the victim as certified by the Doctor, has recorded the dying declaration and the judicial dying declaration was marked as Ex.P12, which would also disclose that it was the petitioner / appellant, who committed the offences. Though, the learned counsel for petitioner / appellant made a vehement and forceful submission by drawing attention of this Court to the testimonies of other witnesses to substantiate the fact that it was a real case of suicide and that the Trial Court did not properly appreciate the oral and evidence in proper perspective.

8. In the considered opinion of this Court, the said points urged by the learned counsel appearing for the petitioner/appellant, cannot be considered at this stage. As already pointed out, the statement give before P.W.12 as well as judicial dying declaration given before the P.W.13 would corroborate with each other on material particulars and it points out that it was the petitioner / appellant who poured kerosene and set her on fire.

9. In the light of the reasons above, this Court is not inclined to suspend the substantial sentence of imprisonment imposed on the petitioner/appellant. Therefore, the Criminal Miscellaneous Petition is dismissed.

10. At this juncture, the learned counsel appearing for the petitioner prays for early hearing and disposal of this criminal appeal. Therefore, this Court directs the Registry to give priority for listing this appeal for early disposal.

-sd/-

06/02/2019

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,
MAHILA COURT, CHENNAI.

2 THE INSPECTOR OF POLICE,
P6, KODUNGAIYUR POLICE STATION,
CHENNAI-600 118.

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

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAL,
CHENNAI.

5 THE SECTION OFFICER,
CRIMINAL SECTION, HIGH COURT,
MADRAS.

+1C.C. to M/S.B.MAHESWARAN Advocate on payment of necessary
charges in SR.NO. 2635

Order

in

CRL MP.8467/2018

IN CRL.A.NO.354 OF 2018

Date :06/02/2019

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MLT-13/02/2019



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