IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Sixth day of September Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M.M.SUNDRESH

and

The Hon`ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION No.11645 of 2019

IN CRL.A.NO.527 of 2019

MUTHU [APPELLANT/ACCUSED]

Vs

STATE REP.BY [RESPONDENT/COMPLAINANT]
THE INSPECTOR OF POLICE,
ERODE NORTH POLICE STATION,
ERODE DISTRICT.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to

(i) To suspend the sentence imposed in the Judgement in order passed by the learned District Sessions Mahila Court, Erode in S.C.No.180 of 2015, vide his order dated 07.12.2018 sentencing the appellant to undergo imprisonment for life for offence U/S 4 of POCSO Act, and to undergo 7 years of Rigorous imprisonment for offence under Section 376 of IPC and to undergo rigorous imprisonment for a period of 5 years for offences U/S 3(2)(v) of SC.ST (Prevention of atrocities) Act and enlarge the petitioner on bail pending disposal of the Crl.A.No.527 of 2019.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.DEEPAN UDAY, Advocate for the petitioner, and of MR. K.PRABAKAR, 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 has been arrayed as an accused in S.C.No. 180 of 2015 on the file of learned District Sessions Mahila Court, Erode. The trial Court by judgment dated 07.12.2018 convicted the petitioner for the offence punishable under Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act and Section 376 read with Section 4 of the POCSO Act, 2012 and for

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the offence punishable under Section 376 IPC, sentenced to undergo seven years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo one year simple imprisonment, for the offence under Section 4 of the POCSO Act, 2012, sentenced to undergo life imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo one year simple imprisonment, for the offence under Section 3(2)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, sentenced to undergo five years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, sentenced to undergo one year simple imprisonment and ordered to run the sentences concurrently. The trial Court upon consideration of the evidence available, convicted the petitioner while acquitting him under Section 3(w)(ii)(1) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. Challenging the same, the present appeal is filed. Seeking to suspend the sentence awarded by the trial Court, the present petition has been filed.

2. The learned counsel appearing for the petitioner submitted that the minority of the victim has not been proved. The evidence of P.W.22 is very clear to the effect that the victim girl was aged about more than 18 years. P.W.2 have also stated that the victim is a major. P.W.3, who is none other than the brother of the victim. Thus, there are material contractions with respect to the age of the victim. The victim was also having an affair with one Sabir. A complaint was also given against the said Sabir. She has also acknowledged the same in her evidence while deposing as P.W.2. The said Sabir was also acquitted in S.C.No. 192 of 2013. The trial Court has not considered these aspects in the right perspective. The provision of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act would not come in the absence of any finding that the petitioner has taken advantage of the status of the victim being the one belonging to the Scheduled Caste community. The offence under Section 376 r/w Section 4 of POCSO Act also would not be attracted in the absence of any findings to the effect that the petitioner was having physical relationship with the victim on promise to marry her. Therefore, the suspension of sentence will have to be granted.

3. The learned Additional Public Prosecutor appearing for the State would submit that the trial Court considered the relevant materials while awarding conviction. Atleast for the offence under Section 376 IPC r/w Section 4 of POCSO Act, there are sufficient evidence, the oral evidence is supported by DNA test. Therefore, the petition will have to be dismissed.

4. On the question of minority, the evidence of P.W.22 coupled with that of P.W.3 would prima facie show that the victim was a major. The question as to whether the victim was made to believe that the petitioner would marry her is a matter to be considered in the appeal after analyzing the evidence available on record. The victim has also accepted about her prior elopement with one Sabir against whom the complaint was given by P.W.1 which has been taken on file in S.C.No.192 of 2013. The petitioner has also been under incarceration from 07.02.2018 onwards. Thus, we do find considerable points available in the appeal.

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5.Considering the above coupled with the period of incarceration of the petitioner, we are inclined to suspend the sentence. Accordingly, 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 the Mahila Session Court, Erode and on further condition that the petitioner shall appear before the concerned Court on the first working day of every month at 10.00 a.m., pending appeal.

-sd/-
06/09/2019

This order, on being produced, be punctually observed and carried into execution by all concerned

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Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE DISTRICT SESSIONS MAHILA COURT, ERODE.

2 THE SUPERINTENDENT, CENTRAL JAIL, COIMBATORE.

3 THE INSPECTOR OF POLICE, ERODE NORTH POLICE STATION, ERODE DISTRICT.

4 THE PUBLIC PROSECUTOR HIGH COURT, MADRAS.

C.C. to M/S.DEEPAN UDAY Advocate on payment of necessary charges

Order

in
CRL MP.11645/2019
in
CRL.A.NO.527/2019

Date :06/09/2019

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