



Bail Slip

The Appellant herein/Accused Viz., namely Chairman, S/o.Ramayanadar, was released on bail as per order of this Court dated 22.01.2010 and made in MP(MD).No.1/2010 in Crl.A(MD). No.13/2010.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.07.2019

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A.(MD)No.13 of 2010

Chairman

... Appellant/Accused(Sole)

Vs.

State represented by,
The Inspector of Police,
Alvarkurichi Police Station,
Tirunelveli District.
(Crime No.28 of 2007)

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374(2) of Cr.P.C., to admit this appeal on file, to call for records from the lower Court(Mahalir Neethi Mandram, Tirunelveli District), to duly quash and set aside the Judgment of the lower Court by acquitting the appellant in S.C.No.480 of 2007 dated 07.12.2009 on the file of the Mahalir Neethimandram, Tirunelveli District.

For Appellants : Mr.V.Kathirvelu,
Senior Counsel,
for Mr.K.Prabhu.

For Respondent : Mr.A.Robinson,
Government Advocate (Crl. Side).

JUDGMENT

The prosecution case is that the appellant gave a false promise to marry the victim and had physical relationship with her and as a result, the victim conceived and later delivered a female child. Thereafter, the appellant had gone back on his assurances



leading to lodging of Ex.P.1 complaint before the Inspector of Police, Alvarkurichi police station. Crime No.28 of 2007(Ex.P.7) was registered for the offences under Sections 452, 376 and 506(i) of I.P.C.

2. Investigation was taken up and final report was filed against the appellant for the aforesaid offences before the learned Judicial Magistrate, Ambasamudram. Cognizance of the offences under Sections 450, 376 and 506(ii) of I.P.C. was taken and committed to the Sessions Court in P.R.C.No.25 of 2007. The case was made over to the Mahila Court, Tirunelveli, in S.C.No.480 of 2007. Charges were framed against the appellant under all these three sections. The appellant pleaded not guilty and claimed to be tried. The prosecution examined as many as 11 witnesses and marked Ex.P.1 to Ex.P.10. On the side of the accused, no evidence was adduced. The learned trial Judge by Judgment dated 07.12.2009 held that the appellant was convicted for the offence under Sections 450 and 376 of I.P.C., and sentenced him to three years Rigorous Imprisonment and 7 years Rigorous Imprisonment. Fine was also imposed on him. Questioning the same, this Criminal Appeal has been filed.

3. A reading of the evidence on record would indicate that the relationship between the appellant and the victim was rather consensual. The offence of Section 376 of I.P.C., can be invoked only, if there was a forcible sexual intercourse without the consent of the victim. In this case, the victim was admittedly a major. She was aged about 24 years. In this case, the appellant was already married to one Mahalakshmi. In fact the victim was also aware of the same. Hence, the victim cannot claim that she believed the assurance of the appellant to marry her. The Court below clearly erred in finding the appellant guilty of the offences with which he was charged. The impugned Judgment passed by the trial Court is therefore set aside.

4. In fact even before the commencement of the arguments, the learned Senior counsel appearing for the appellant submitted that the fact remains that on account of the relationship between the appellant and the victim, a girl child was born and she is now aged about 12 years. The appellant as well as Mahalakshmi are present before me. The victim and the child are also present. Now all of them saying in unison that the appellant will take care of the victim as well as the child. Mahalakshmi, wife of the appellant has no objection for adopting this arrangement. In fact Mahalakshmi would call upon this Court not to sustain the impugned Judgment. The undertaking given by the appellant that he would maintain the victim and the child is placed on record. The impugned Judgment of conviction and sentence is set aside.

5. The Criminal Appeal stands allowed. The fine amount already remitted by the appellant shall be refunded to the appellant. Bail bond, if any, executed by him shall stand



cancelled. No costs.

Sd/-

Assistant Registrar

// True Copy //

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Sub Assistant Registrar(CS)

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To:

- 1.The Judicial Magistrate, Ambasamudram.
- 2.Do through The Chief Judicial Magistrate, Tirunelveli.
- 3.The Judge, Mahalir Neethimandram,
Tirunelveli District.
- 4.The Superintendent, Central Prison, Tirunelveli.
5. The Inspector of Police,
Alvarkurichi Police Station,
Tirunelveli District.
- 6.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Section Officer, (2 Copies)
Criminal Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.K.PRABHU, Advocate (SR-77040[F] dated 23/07/2019)

CrI.A. (MD)No.13 of 2010
23.07.2019

JMN(04.10.2019) 3P : 10C