IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.5944 of 2020
in Crl.A.No.388 of 2020

Prakash ... Petitioner

Versus

The State of Tamil Nadu,
Rep. by Inspector of Police,
All Women's Police Station,
Thirukovilur, Villupuram District.
(Crime No.19 of 2010) ... Respondent

Prayer: Criminal Miscellaneous Petition filed under Section 389 (1) of the Code of Criminal Procedure, to suspend the sentence passed by the Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court)Villupuram in S.C.No.27 of 2016 dated 18.09.2020 for the offence under Section 417 IPC and enlarge the petitioner on bail.

For Petitioner : Mr.M.Devaraj

For Respondent : Mr.C.Raghavan
Government Advocate (Crl.Side)

ORDER

The petitioner/accused in S.T.C.No.27 of 2016 on the file of the learned Sessions Judge, Magalir Neethi Mandram (Fast Track Mahila Court)Villupuram was convicted by the judgment dated 18.09.2020 and sentenced to undergo one year Rigorous Imprisonment and to a pay a fine of Rs.2,00,000/- in default to undergo six months Simple Imprisonment for the offence under Section 417 IPC. The charges under Sections 376, 312 IPC against the petitioner was not proved beyond the reasonable doubt and the petitioner was acquitted under Section 235 (1) IPC. Against the conviction, present Criminal Appeal filed along with a petition for suspension of sentence.

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2.The brief facts of the case is that P.W.1, victim was residing in Kengatharan Village, She lost his mother and her father got second marriage. The petitioner/accused is a relative of her step mother. Both P.W.1 and petitioner developed love affair between them. The petitioner promised the victim that he will marry her and had physical relationship with her. Due to which she become pregnant. The petitioner took the victim to the hospital to abort the pregnancy for the reason that she has to study further. By giving false promise the petitioner continued to have physical relationship and the victim got pregnant for the second time. This time the petitioner refused to marry her and forced her to abort the pregnancy. Thereafter Panchayat was held in their village and in the Panchayat the petitioner admitted the physical relationship with the victim but refused to marry her and admitted to pay Rs.50,000/- as compensation. Hence a complaint came to be lodged.

3.Thereafter, the victim gave birth to the female child named Bavithra on 18.01.2011. On 16.02.2016, the petitioner married another women. P.W.2/father of the victim stated about the lodging of complaint before the respondent Police in his evidence. P.W.3 is the aunt of the victim girl she deposed that the baby born to the victim is now six years old. P.W.4 is the witness to the observation mahazar/Ex.P2. P.W.4 to P.W.6 have not supported the case of the prosecution. P.W.7 is the Doctor who conducted DNA test by taking blood samples from the child, victim as well as the petitioner. It was confirmed that the petitioner is the biological father for the baby and the DNA test report has been marked as Ex.P7. P.W.10 is the Doctor who conducted potency test for the victim. P.W.8/The Sub-Inspector of Police who perused the records and found that CSR.No.205 of 2010 was pending and conducted enquiry and the case came to be registered in Crime No.19 of 2010 for the offence under Section 417, 376, 294(b) IPC. Thereafter investigation was conducted and the witness were examined, Observation mahazar and Rough Sketch were prepared and the petitioner was arrested. Thereafter Section was altered and alteration report was filed as Ex.P11 for the offence under Sections 312, 417 and 376 IPC. P.W.9/Inspector of Police, took up the case for further investigation and after completion of investigation and filed charge sheet before the Lower Court.

4.The contention of the learned counsel for the petitioner is that the case was registered on 06.07.2010 and there is a considerable amount of delay and no reason given for the delay. Further the person who registered FIR was not examined as witnesses. No evidence was available to show whether the victim was pregnant at the time of lodging the complaint and earlier the pregnancy was aborted. The birth certificate of the child was not produced. The Lower Court merely on the DNA test given a finding that the petitioner is the Biological father which is not acceptable since the complaint came to be lodged after the marriage of the petitioner. Except the relatives of victim no

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individual private witness have supported the case of the prosecution. The victim is major and admittedly on her own will the victim had physical relationship with the petitioner on several occasion and after marriage of the petitioner with another lady the case has been lodged. The victim was a aware of what she was doing and the consequence. In view of the same cannot said to have cause any disruption .

5.The learned Government Advocate submitted that P.W.1 is the victim. P.W.1's Mother passed away. P.W.2/Father of P.W.1 got second marriage. The petitioner is the relative of P.W.1's step mother. The petitioner taking advantage of her situation by giving false promise had physical relationship with her on several occasions. He further submitted that P.W.1 become pregnant and the petitioner took her to the hospital to terminate the pregnancy for the reason that he has to complete her studies. Further on the false promise that he will marry her, the petitioner continued his physical relationship with P.W.1. On the second time, she become pregnant and this time the petitioner forced her to abort the pregnancy and refused to marry her. Thereafter Panchayat was held, in the Panchayat the petitioner admitted about physical relationship and admitted to pay compensation of Rs.50,000/- to the victim and refused to marry her. Later on 16.02.2016 the petitioner married another lady. P.W.2, P.W.3/Father and aunt of P.W.1 lodged a complaint.

6.The respondent Police initially registered a case in CSR No.205 of 2010. Since the issue is between the relatives no action was taken and the complaint was kept pending. P.W.8 on 05.10.2010 while perusing the old records found that CSR.No.205 of 2010 kept pending and thereafter conducted enquiry registered a case in Crime No.19 of 2010 for the offence under Section 417, 270 IPC. The Police prepared observation mahazar, rough sketch and examined the witness and the petitioner was arrested. P.W.4, witness to the observation mahazar and P.W.5 and P.W.6/other independent witnesses have not supported the case of the prosecution. P.W.7 Doctor who conducted DNA test has taken samples from P.W.1, P.W.1's child and the petitioner. The DNA test turns positive and the report has been marked as Ex.P7. Thereafter P.W.9/Inspector of Police took up further investigation, collected materials, recorded statement of witness and filed charge sheet before the Trial Court for the offence under Section 417, 294(b), 376 IPC.

7.During the Trial P.W.1 to P.W.10 were examined and Exs.P1 to Ex.P13 were marked on the prosecution side. On the defence side, no witness were examined and no document were marked. Thereafter on conclusion of the Trial, the Trial court acquitted the petitioner from the offence under Sections376, 312 IPC and convicted for the offence under Section 417 IPC.

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8.Considering the rival submission and perusal of the materials it is seen that the petitioner is the relative of the P.W.1. The petitioner mother of the Victim passed away. The victim studied upto 8th standard. P.W.2/father of the victim got second marriage. The petitioner is the relative of victim's step mother. Taking advantage of the relation, the petitioner by giving false promise had physical relationship with the victim on several occasion and the pregnancy of the victim was aborted. When the victim got pregnant for the second time, the petitioner forced her to abort the pregnancy and refused to marry her. Thereafter the issue was taken to the Village Panchayat, in the Village Panchayat the petitioner admitted about the physical relationship and refused to marry the victim and admitted to pay a sum of Rs.50,000/- as compensation which is not accepted and a case came to be registered. Subsequently the petitioner married another lady. The victim gave birth to the female child. The Trial Court finding that the victim had physical relationship with the petitioner on her own will and she is major acquitted the petitioner from the offence under Section 376, 312 IPC and convicted for the offence under Section 417 IPC. The Trial Court has already suspended the sentence of the petitioner till 15.10.2020.

9.Further, in view of the fact that there are several infirmities in the prosecution case and there are arguable points involved in the Appeal, as contended by learned counsel for petitioner and further, the Appeal is not likely to be taken up for final hearing in the near future, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence.

10.Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond for a sum of Rs.10,000/-(rupees Ten Thousand only) each with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Thirukovilur within a period of 15 days from the date of receipt of a copy of this order and on further condition that the petitioner shall appear before the said Court on the first working day of once in three month of English Calender Month at 10.30 a.m. till the disposal of the Appeal.

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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.

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TO

1 THE SESSIONS JUDGE,
MAGALIR NEETHI MANDRAM
(FAST TRACK MAHILA COURT)
VILLUPURAM.

2 THE JUDICIAL MAGISTRATE,
THIRUKOVILUR.

3 THE CHIEF JUDICIAL MAGISTRATE
VILLUPURAM [FOR INFORMATION]

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
ALL WOMEN'S POLICE STATION,
THIRUKOVILUR,
VILLUPURAM DISTRICT.

+1C.C. to M/S.M.DEVARAJ Advocate on payment of necessary charges SR NO.8491

Order

in
CRL MP.5944/2020

in
CRL A.388/2020

Date :21/12/2020

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