

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.7158 of 2020

in

Crl.A.No.65 of 2020

Ravichandran

... Petitioner

Vs.

State rep.by its
Inspector of Police,
AWPS, Tiruppur,
Tiruppur District.

.... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) of the Code of Criminal Procedure, to suspend the sentence imposed in the judgment in order passed by the Magalir Neethimandram (Fast Track Mahila Court) Tiruppur in S.No.158 of 2016 vide his order dated 21.01.2020 sentencing the appellant to undergo rigorous imprisonment for 10 years and to pay fine of INR 2,000/- for offences under Section 307 of IPC, in default of payment of fine, the accused needs to undergo rigorous imprisonment for 5 years for offences under Section 506 (ii) IPC and enlarge the petitioner on bail pending disposal of the above criminal appeal.

For Petitioner : Mr.R.John Sathyan for
Mr.S.Patrick

For Respondent : Mr.C.Raghavan
Government Advocate [Crl. Side]

ORDER

This petition is filed seeking suspension of sentence sentencing the petitioner to undergo rigorous imprisonment for 10 years. The petitioner A1 was convicted by Magalir Neethimandram, Fast Track Mahila Court, Tiruppur, by judgment made in S.C.No.158 of 2016 dated 21.01.2020 and sentenced the petitioner to undergo Rigorous Imprisonment for 10 years and to pay a fine of Rs.2000/- for the offence punishable under Section 307 IPC, in default to undergo one year Rigorous Imprisonment and to undergo Rigorous Imprisonment for five years for the offence punishable under Section 506 (ii) IPC.

2. The gist of the case is that on 10.12.2005, the de facto complainant / P.W.2 at about 10.00 p.m., had lodged a complaint to the respondent police. The de facto complainant has 2 children. The younger girl named Kaviya was aged about 6 years and the said Kaviya was deaf from her birth for which she has taken surgical treatment in

Vikram Hospital. After surgery, she gained hearing power for 1 ½ years and again she became deaf. The petitioner herein named Ravichandran represented to the de facto complainant that he would make his daughter regain hearing power through meditation. Believing the words of the petitioner, the de facto complainant sent his girl one Kaviya to the house of petitioner herein to undergo treatment. The petitioner further represented to the parents of the victim girl that they should not see her and disturb her during the meditation. Two months thereafter, when the de facto complainant went to meet her daughter, found his daughter had injuries on her head, left ear, neck, on her back and all over the body. When she was inquired, the victim girl informed that she was attacked by the petitioner and his wife with household articles such as Chappathi stick, knife etc., Further they made the cat to scratch her back. Prior to that, the petitioner received several sums of money for the purpose of treatment nearly around Rs.4,00,000/- with the defacto complainant had paid. Lastly, 15 days prior 07.12.2005, the petitioner demanded a sum of Rs.1,00,000/-. When the de facto complainant refused to pay the money, the petitioner threatened that he will kill his daughter. Finally, on 07.12.2005, the de facto complainant took the daughter and got her admitted in Kovai Medical Centre, where she was given treatment. Thereafter, on 10.12.2005, he lodged a complaint against the petitioner. Initially, complaint was registered under Sections 384 and 307 IPC, by PW.5 - the Sub-Inspector of Police. P.W.6 - the Inspector of Police took up the investigation, visited the scene of occurrence, prepared observation mazahar, rough sketch and inquired the witness. P.W.1 is the victim girl, P.W.2 is the de facto complainant, P.W.3 is the observation mazahar witness, P.W.4 - is the Doctor attached to Kovai Medical Centre and P.W.5 - is the Sub-Inspector of Police.

3. On completion of investigation, the respondent police filed an alteration report altering the section 506(ii), 307 IPC r/w. 34 IPC and filed a charge sheet against the petitioner as A1 and his wife A2. The trial Court had examined P.W.1 to P.W.6 and marked Exs.P.1 to P.6 and on the defence side neither examined any witness nor marked any documents. The trial Court, after completion of investigation of the petitioner A1, found guilty and convicted him as stated above. As regards A2, she was acquitted from all charges.

4. The contention of the learned counsel for the petitioner is that the petitioner and the P.W.2 had some business transaction and that they had some dispute between them and by using his minor girl P.W.1, the de facto complainant had lodged the false complaint against the petitioner and his wife. The case of the prosecution proceeded that the petitioner and his wife with common intention joined together, inflicted injuries on the victim girl while she stayed for two months in the petitioner's house. P.W.1 had given an exaggerated version, wherein she had magnified the injuries sustained by her as though inflicted using various domestic articles. Further, she was not allowed to meet her parents and she was living in fear. It is an admitted fact that the petitioner was living in a 100 sq.ft house which is a single room portion. He was living along with his wife and two children. The petitioner's children and P.W.1 were

attending the school together. Further, it is admitted that the petitioner was living in a compound where 6 other tenants were residing nearby. None of the nearby residents were examined as witnesses. In this case P.W.3 observation mazahar admits the same. P.W.3 stated that he is the friend of P.W.1 and he was called to be the witness to the observation mazahar. P.W.2, the de facto complainant has given an exaggerated version about the entire incident. He states that he had paid cash to the petitioner on several occasion to the tune of Rs.4,00,000/- . But there is no proof of making such huge payment. The story stated by P.W.2 is highly imaginary. P.W.2 is an educated person who is running a business and the reason given by him that the petitioner forced them not to visit the child for a period of two months is un-believable. Further, P.W.2 admits that during the two months on several occasions he had taken the petitioner to his factory for meditation of his employees and dropped him back in his house. In such circumstances, the conduct of P.W.2 not visiting his minor daughter who was aged six years at that time his highly artificial. Further P.W.4, the casualty medical Doctor attached to Kovai Medical Centre states that he had examined P.W.1 on 07.12.2005 and had issued accident register. In his evidence he admits that P.W.1 was brought to him for giving treatment for her deafness. Further, there are vital contradiction in the evidence of P.W.1 and P.W.2. PW4 stated that the injuries recorded by him were not recent one and were old scars. P.W.5 registered the F.I.R. and P.W.6, the investigation officer feigns ignorance on vital aspect of the case. From the evidence of PW6, it is apprehent that she has not visited the scene of occurrence, examined any witnesses and only conducted a table top investigation. The witnesses in this case namely P.W.1 and P.W.2 have given a highly exaggerated version and contradictory to each other. Further, the oral evidences are contra to medical evidence of P.W.4 Doctor. The Lower Court failed to consider these aspects. Further, the lower Court on the same set of evidences, has acquitted A2 in this case, the same analogy is applicable to the petitioner. He further submitted that on his conviction from 21.01.2020 he had been in confinement and thereafter, the petitioner was granted interim order of suspension of sentence on 23.04.2020 for a period of three months, on 23.07.2020 the interim bail was extended till 18.08.2020. On that day, the petitioner was directed to surrender before the trial Court and execute a bond for Rs.25,000/- with two sureties of whom one should be a blood relative surety to the satisfaction of the Magalir Neethimandram, Fast Track Mahila Court, Tiruppur. Further the petitioner was directed to appear before the respondent police every Monday and Friday at 10.30 a.m., till 18.08.2020. The petitioner produced two sureties before the lower Court. One was his father-in-law and another was his sister-in-law. The lower Court accepted the surety of his father-in-law and rejected the surety of his sister-in-law on the ground that she cannot be termed as a blood relative surety. Due to COVID-19 lock down, there was travel restrictions and the relative were able to travel and offer sureties. Considering the same, the petitioner was granted extension of time till 01.09.2020, by this Court. Thereafter, to till 01.09.2020 the execution of surety was not completed. Hence, on 01.09.2020, this court canceled the interim bail. Hence the present petition has been filed.

5. Learned Government Advocate submitted that in this case de facto complainant is the father of the victim girl who had lodged the complaint against the petitioner on 10.12.2005, after admitting his daughter for treatment on 07.12.2005 in Kovai medical hospital. His minor daughter P.W.1 who was aged about six years then was having hearing problem and she was deaf. Initially, she underwent surgery and got it rectified, and after some time she lost her hearing power again. The petitioner was claimed himself to be a person, who can to rectify birth defects, the P.W.1 approached the petitioner and took him to his house for treating his daughter, for a period of six months she was treated at his home. Later, the petitioner informed that the daughter has to have intense healing from meditation and for the same she has to stay in his place without any disturbance or distraction and restricted the de facto complainant and his wife to meet his daughter. During the stay of victim P.W.1 in the house of petitioner, she was ill treated and inflicted with injuries. Further over a period of time the petitioner received a sum of Rs.4,00,000/- on various dates for the purpose of treatment, finally, 15 days prior to 07.12.2005, the petitioner demanded Rs.1,00,000/- for the treatment. P.W.2 refused for the same. The petitioner threatened the de facto complainant that if the money is not paid his daughter would be killed. On 07.12.2002, P.W.2 had gone to the house of the petitioner and took away his daughter. After coming home, he found that his daughter was with severe injuries on her head, neck and her back. When it was questioned, the daughter disclosed that the injuries were inflicted by the petitioner and his wife using domestic articles and his daughter was with fear and pain. On 07.12.2005, the de facto complainant took his daughter to Kovai Medical Hospital and admitted her for treatment and thereafter, he had come to the respondent police on 10.12.2005 for lodged a complaint. PW5 received the same and registered FIR. P.W.6 took up the investigation on 11.12.2005 visited the scene of occurrence, prepared observation mazahar and examined the witnesses. On the same day at about 3.00 p.m., the petitioner and his wife were arrested. P.W.6 recorded the statement of the victim with the help and aid of teacher from the deaf and dumb school. P.W.4, the Doctor who treated P.W.1 had given medical report. Thereafter, on conclusion of investigation, Sections were altered to Sections 307, 506 (ii) r/w. 34 IPC and charge sheet was filed before the Court. The trial Court, on evidence and materials produced, had convicted the petitioner finding the act of the petitioner as gruesome, the petitioner inflicted injuries on a minor disabled girl and opposed the bail application.

6. Considering the submission and on perusal of the material, it is seen that in this case P.W.1 is the victim girl and P.W.2 is the father of the victim, P.W.3 - is the witness for observation mazahar, a friend of PW2. P.W.4 - is the casualty medical Doctor, attached to Kovai Medical Centre. P.W.5 - is the Sub Inspector of Police, who received the complaint, registered an FIR. P.W.6 - is the Investigating Officer. P.W.1's evidence appears exaggerated against the petitioner and his wife. The petitioner, his wife and children were residing in a single room house of 100 sq.ft. and it was a row house. Inside the compound there are six other tenants, none of the tenants of the nearby houses were examined as witness in this case

P.W.3 Observation mazahar witness admits that he is the friend of P.W.1. P.W.1 and P.W.2 version with regard to the injuries is contradictory to the medical evidence. The evidence of P.W.4 - the doctor who examined P.W.1 confirms the same. There are improvements and contradiction in the evidence of P.W.1 and P.W.2. P.W.4 categorically states that the injuries projected by P.W.1 and P.W.2 are not recent injuries and they are old scars, the deaf and dumb Teacher who translated the version of PW1 has not been examined as witness in this case.

7. The case of the prosecution is that the victim was living in the house of the petitioner for a period of two months. Further on 07.12.2005, from the house of the petitioner, victim girl was taken to the hospital. The doctor's evidence is that the injuries are old scars and not recent in nature which create doubt, whether the petitioner is the reason and cause for the injury. Further, it is found that there have been contradiction in the evidence of P.W.1 and P.W.2. It is seen that the lower Court on the same set of evidence had acquitted A2 in this case.

8. Further this Court had earlier granted interim bail on 23.4.2020 and thereafter, the petitioner was directed to execute the sureties before the lower court on 18.08.2020 and one of the surety to be a blood relative surety which the petitioner would not produce then. The petitioner was in confinement after the judgment.

9. Considering the facts and circumstances of the case and 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 the 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 in the event of his arrest on condition that the petitioner shall execute 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 Fast Track, Mahila Court, Tiruppur, 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 every month at 10.30 a.m. till the disposal of the appeal.

-sd/-

27/11/2020

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

TRUE COPY

TO

1 THE MAGALIR NEETHIMANDRAM
FAST TRACK MAHILA COURT, TIRUPPUR

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 INSPECTOR OF POLICE,
AWPS, TIRUPPUR,
TIRUPPUR DISTRICT.

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

C.C. to M/S. S.PATRICK Advocate on payment of necessary charges
Sr.7803

Order
in
Crl.M.P.No.7158 of 2020
in
Crl.A.No.65 of 2020
Date :27/11/2020

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copies of the BAIL/Anti.BAIL Orders in this format

RVR 02/12/2020

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