

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.M.P.No.6705 of 2020
in C.A.No.600 of 2020

Semalaiappan

... Petitioner

Versus

State by

The Inspector of Police,
All Women Police Station,
Dharapuram,
Tiruppur District.
(Cr.No.6 of 2011).

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) of Cr.P.C., to suspend the conviction and sentence imposed on the petitioner in S.C.No.204 of 2014, dated 27.08.2019 on the file of the Magalir Neethimandram (Fast Track Mahila Court), Tiruppur, Tiruppur District pending disposal of the above Criminal Appeal.

For Petitioner : Mr.C.Prakasam

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

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner in judgment, dated 27.08.2019 in S.C.No.204 of 2014, passed by the learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur.

2.The petitioner was convicted for offence under Section 376 IPC and sentenced to undergo ten years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo one year Rigorous Imprisonment.

3.The gist of the case is that PW1 lodged a complaint [Ex.P3] on 29.06.2011 at about 22.30 hours to PW6, the Inspector of Police. On receipt of the same, an FIR [Ex.P7] in Crime No.6 of 2011 was registered. The complaint [Ex.P3] is that PW1 is

aged about 15 years and she was studying 8th std in Government Higher Secondary School, Manakadavu and her date of birth is 11.12.1997. The petitioner and PW1 are relatives. On 09.07.2010, PW1's father and her younger brother were not at home and PW1 was alone. At about 01.00 p.m., in the night hours, the petitioner came to the house of PW1, threatened her, forcibly had sexual intercourse and further threatened not to disclose the same to any one. On sensing fear, PW1 has not disclosed the same. Taking advantage of the same, the petitioner had been having sexual intercourse with her regularly. When PW1 was studying 9th std, she felt giddiness and her parents took her to Razia Begum Hospital at Dharapuram. The Doctor examined PW1 and found her that she was seven months pregnant. When the parents enquired the same, PW1 disclosed that the petitioner is responsible for the pregnancy. Thereafter, PW1 and the petitioner got married. On the night of the marriage, the petitioner absconded. On 30.04.2011, a female child was born at Razia Begum Hospital and the name of the child is Sasmitha. The birth certificate of PW1 is Ex.P1 and the birth certificate of the child is Ex.P2. PW1, the father of PW1 corroborated the evidence of PW1.

4.PW6 visited the scene of occurrence, examined the witnesses, prepared Observation Mahazar [Ex.P5], Rough Sketch [Ex.P8]. PW4 is the witness in the locality, in whose presence the Observation Mahazar [Ex.P5] was prepared. Later, PW6 got transferred and handed over the Case Diary to PW7. PW7 took up the investigation on 13.08.2011, examined the witnesses Aruchamy/PW2, Sangiliammal and recorded their statement and on information on 20.02.2013, arrested the petitioner in presence of PW5, in whose presence, the petitioner gave a confession [Ex.P6]. PW7 gave a requisition to the Court to subject PW1, the petitioner and the child for DNA test. Thereafter, PW7 got transferred. PW9, the Sub Inspector of Police, on 03.02.2014 deputed Women Constable to collect blood samples from PW1, the petitioner and child for DNA test. PW3, the Doctor examined the petitioner and issued the Accident Register [Ex.P4]. PW10, the Investigating Officer took up further investigation on 07.05.2014, examined the Deputy Director and Assistant Chemical Examiner, who conducted DNA examination and recorded their statements, received DNA report [Ex.P9] from PW8, the Assistant Director, Forensic Science Laboratory, Chennai and on completion of investigation filed charge sheet against the petitioner before the trial Court.

5.During trial, the prosecution examined 10 witnesses and marked 9 documents and on the side of the defence, 1 witness was examined and two documents were marked. On completion of trial, the learned Judge, convicted the petitioner as stated above.

6.The defence of the petitioner is that earlier to the complaint [Ex.P3], PW1 lodged a complaint on 08.03.2011, which was enquired and closed. On the same set of facts, a second complaint [Ex.P3] has been lodged which is not permissible. As per the school certificate of PW1 [Ex.D2], the date of birth of PW1 is 11.07.1997, which is contra to Ex.P1. Hence, the petitioner been falsely implicated in this case.

7.The learned counsel for the petitioner submitted that PW1 completed the age of 18 years at the time of occurrence and only after the marriage, the petitioner had sexual intercourse with her. He further submitted that the allegations made against the petitioner that he raped the minor girl/PW1 is not true. PW1 and her father/PW5 admit that the marriage between the petitioner and PW1 was conducted. Hence, the offence under Section 376 IPC is not made out. Further, the petitioner examined himself as DW1 and narrated the events, that PW1 is a major on the date of occurrence. The age certificate produced by the prosecution [Ex.P1] is false. As per Ex.D2, the date of birth of PW1 is 11.07.1997.

8.The learned counsel for the petitioner further submitted that for the same set of facts, a complaint [Ex.D1] on 08.03.2011 was lodged which is admitted by PW1 and PW2. This complaint [Ex.D1] after enquiry was closed. Suppressing the same, PW1 lodged the second complaint which is marked as Ex.P3. PW10/the Investigating Officer feign ignorance about the earlier complaint [Ex.D1]. PW1 admitted that she lodged a complaint against the petitioner, since the petitioner failed to come and visit her child and was making arrangements for another marriage. Only on a wrong notion that the petitioner is attempting to get married with another person, the above complaint came to be lodged. The petitioner is in incarceration from the date of judgment. The petitioner is the sole breadwinner of the family and due to the incarceration, his family members are put to sufferings and they are unable to sustain themselves. In order to show his bonafide, the petitioner is willing to give Rs.50,000/- each to the daughter of PW1 Sasmita and PW1. Further, he undertakes to pay the amount of Rs.50,000/- while executing sureties and the balance amount would be paid within a period of four months. This payment is without prejudice to his rights and merits of the case.

9.The learned Government Advocate [Crl. Side] appearing for the respondent Police submitted that in this case, PW1 lodged a complaint [Ex.P3] to PW6 on 29.06.2011 stating that on 09.07.2010 when she was alone at home, the petitioner taking advantage of absence of her father PW5 and her younger brother, had entered the house of PW1 and forcibly had sexual intercourse with her and threatened her not to disclose the same to anyone. Taking advantage of silence of PW1, the petitioner had committed forcibly sexual intercourse with her on several occasions. When she was studying in 9th std, PW1 felt giddiness and vomiting. PW1

was taken to Razia Begum Hospital for treatment, during examination in the hospital, it was found that PW1 was pregnant for seven months. On 08.03.2011, a complaint was given to the Superintendent of Police, which was forwarded to the All Women Police Station. Since the petitioner was a relative, he was called for enquiry, but the petitioner did not participate the enquiry. Thereafter, the petitioner agreed for marriage with PW1, but on the date of the marriage, the petitioner absconded himself. On 30.04.2011, a baby was born to PW1. On 29.06.2011, a complaint [Ex.P3] was lodged to the respondent Police and FIR [Ex.P7] was registered. PW6, the Inspector of Police visited the scene of occurrence, prepared Observation Mahazar [Ex.P5] in presence of PW4 and Rough Sketch [Ex.P8], examined the witnesses present in the scene of occurrence, recorded their statement of PW1, her father PW2 and other relatives.

10.It is further submitted that PW1 is a minor and her date of birth is 11.12.1997. The birth certificate of PW1 is Ex.P1 and the child birth certificate is Ex.P2. On transfer of PW6, PW7 took up the investigation made requisition for DNA test for PW1, the petitioner and child. The petitioner was arrested on 20.02.2013 in presence of PW5 and the petitioner gave confession [Ex.P6]. PW8 conducted DNA test and gave a report Ex.P9, confirming that the petitioner is the biological father of the baby. On transfer of PW7, PW10 took up further investigation examined the witnesses and filed charge sheet.

11.The petitioner examined himself as DW1 and marked the earlier complaint [Ex.D1] dated 08.03.2011 and the birth certificate of PW1 [Ex.D2]. Ex.D2 shows that the date of birth of PW1 is 11.12.1997. The prosecution proved that the petitioner had forcible sexual intercourse with PW1 on several occasions. Due to which, a girl baby was born to PW1 and the petitioner is the biological father of the child. The trial Court on considering the evidence and material, had rightly convicted the petitioner.

12.This Court considered the rival submissions and perused the materials available on record.

13.The main contention of the petitioner is that the earlier complaint [Ex.D1] dated 08.03.2011 was closed and thereafter, on the same set of facts, the second complaint [Ex.P1] dated 29.06.2011 was received by the respondent and on the complaint, [Ex.P7] FIR has been registered, which is not proper. It is not in dispute that the petitioner and PW1 are relatives. It is the petitioner is the cause of PW1's pregnancy which is proved by PW8 and through Ex.P9. The parents of PW1 were attempting for a solution, considering the future of PW1 and the baby. Hence, Ex.D1 has been lodged prior to the birth of the child. After the marriage was conducted and on the same day night of the marriage, the petitioner absconded himself. Thereafter, PW1 had given birth to a girl baby on 30.04.2011. In the birth certificate [Ex.P2], it is seen that the petitioner name is shown as father

of the child. Admittedly in this case, on Ex.D1, no FIR was registered. The FIR was registered on the second complaint dated 29.06.2011. The petitioner was absconded and he could be arrested only on 20.02.2013. PW1 admitted that the complaint [Ex.P3] was lodged, since the petitioner was neglecting her and failed to visit her child and take care of them and was making arrangement for marriage with another girl. It is seen that there is a possibility of re-approachment between the petitioner and PW1. Further, the girl child Sasmitha is now aged 8 years old and she is attending the school. It is admitted that the marriage was held between the petitioner and PW1 subsequent to the sexual intercourse.

14.Finding arguable points involved in the appeal and considering the period of incarceration and the appeal is not likely to be taken up for final hearing in the near future, hence, this Court is of the considered view that the petitioner herein is entitled to the relief of grant of suspension of sentence and bail.

15.Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioner is directed to be enlarged on bail on the following conditions:-

(i)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 learned Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur, within a period of 15 days from the date of receipt of a copy of this order.

(ii)The petitioner shall appear before the said Court once in three month i.e., from February 2021 at 10.30 a.m., till the disposal of the appeal.

(iii)The petitioner shall make a payment of Rs.50,000/- (Rupees fifty thousand only) to PW1 and produce the proof of the same before the Sessions Judge, Magalir Neethimandram (Fast Track Mahila Court), Tiruppur while executing sureties. The balance amount of Rs.50,000/- shall be paid within a period of four months thereof.

16.It is made clear that if the petitioner fails to make the balance amount of Rs50,000/-, the order for suspension of sentence and bail would stand cancelled automatically, without any notice. It is also made clear that no extension of time for making payment of the balance amount of Rs.50,000/- would be entertained for whatsoever reason.

17.In view of the above, this Criminal Miscellaneous Petition is ordered.

-sd/-
16/12/2020

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,
MAGALIR NEETHIMANDRAM (FAST TRACK MAHILA COURT),
TIRUPPUR.

2 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
DHARAPURAM, TIRUPPUR DISTRICT.

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

Order

in
CRL.MP.NO.6705/2020

in
CRL.A.NO.600/2020

Date :16/12/2020

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