

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.7176 of 2020
in Crl.R.C.No.1033 of 2020

Arun

... Petitioner

Versus

State, rep. by the
Inspector of Police,
All Women Police Station,
Pollachi.

(Crime No.31 of 2020)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389 (1) of the Code of Criminal Procedure, to suspend the sentence confirmed in the judgment in Criminal Appeal No.338 of 2017, dated 04.09.2020 on the file of the V Additional District & Sessions Judge, Coimbatore in confirming the judgment made in C.C.No.176 of 2011, dated 05.10.2017 on the file of the Judicial Magistrate I, Pollachi, pending disposal of the Criminal Revision Petition on the file of this Court.

For Petitioner : Mr.I.Abrar MD Abdullah

For Respondent : Mr.C.Iyyappa Raj,
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the learned V Additional District and Sessions Judge, Coimbatore in Crl.A.No.338 of 2017, dated 04.09.2020, confirming the judgment dated 05.10.2017 in C.C.No.176 of 2011, passed by the learned Judicial Magistrate No.I, Pollachi.

2.The petitioner was convicted for offence under Section 417 IPC and sentenced to undergo for one year Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo three months Simple Imprisonment.

3.The gist of the case is that the victim girl is the daughter of PW1. On 29.08.2010, PW1 has lodged a complaint [Ex.P4] to the respondent Police stating that his daughter was working as Accountant in N.S Traders, Pollachi. The petitioner/accused is the Owner-cum-Driver of the load van and he was engaged for transporting goods for the said Traders. During such time, the petitioner and the victim girl developed liking each other and later, developed into love affair. The petitioner used to visit the victim girl and they went around to various places. On 18.03.2010, the petitioner had dropped the victim girl in her house and informed her that he would come back at early hours. At about 02.00 a.m., both the victim and the petitioner were in a compromising position in the garden, which was witnessed by PW1. On seeking PW1, the petitioner attempted to run away and got slipped, fell down, sustained injuries. The neighbours by then reached there and caught the petitioner. The incident was informed to PW8, who is the Manager of the Farm and he informed to his Boss/PW7. On the next day morning, in the presence of PW7, PW8 and elders of both the families, a panchayat was held. The family members of the petitioner offered to pay Rs.2,00,000/- as compensation, which was refused and the victim girl was particular in getting married to the petitioner. In the presence of panchayathars, an undertaking was given by the petitioner that he would marry the victim girl after the marriage of his sister, which is to be held shortly. This undertaking was notorized. Thereafter, the petitioner started avoiding the victim girl and failed to marry her. Hence, a complaint [Ex.P4] came to be lodged. On receipt of the complaint [Ex.P4], PW10 registered an FIR [Ex.P5] in Crime No.31 of 2010, visited the scene of occurrence, prepared Observation Mahazar, Rough Sketch, enquired the witnesses.

4.In this case, PW1 is the father of the victim; PW2 is the Doctor, who examined the petitioner and gave Potency Certificate; PW3 is the Scientific Officer from the Forensic Department; PW4 and PW5 are the Head Constables, who produced the victim and the petitioner for medical examination; PW6 is the Sister of the victim, who stated about the relationship between the petitioner and her sister; PW7 is the owner of the Farm; PW8 is its Manager; PW9 is the Doctor who examined the victim girl and PW10 is the Investigating Officer. On completion of investigation, the respondent Police has filed the charge sheet before the trial Court.

5.During trial, the prosecution examined PW1 to PW10 and marked Exs.P1 to P6. On the side of defence, no witness was examined and no document was marked. On appreciation of the evidence and materials produced, the trial Court convicted the petitioner as stated above, which was confirmed by the lower appellate Court, by judgment, dated 04.09.2020 in Crl.A.No.338 of 2017.

6.The learned counsel for the petitioner submitted that though PW1 stated that the panchayat was held and the petitioner gave undertaking [Ex.P2(A)], this document was not shown to PW1 and he did not depose anything based on the same. PW1 stated that his daughter and the petitioner were seen together in the garden on 18.03.2010 in a compromising position. In the alleged undertaking [Ex.P2(A)], it is mentioned that both the petitioner and the victim were sitting together in the garden and talking. The learned counsel for the petitioner further submitted that PW1 has informed PW8 about the incident on the date of occurrence, who in turn informed PW7, both reached the scene of occurrence on the next day and in presence of them and panchayathars, a panchayat was held and undertaking is said to have been obtained from the petitioner that the petitioner marry the victim girl. PW7 in his evidence has not stated about the alleged undertaking [Ex.P2(A)]. Further, in the judgment of the lower Court the issue of panchayat is referred to, but no reference about any document, which is marked as [Ex.P2(A)]. PW7 and PW8 feign ignorance with regard to the other aspects of the case.

7.The other witness is PW6, who is the sister of the victim girl. PW6 stated that the victim and the petitioner were in love with each other and they roamed together to various places. The evidence of PW6 is in the nature of hearsay. In this case, the victim girl committed suicide two years after the occurrence and there is no deliberation either by the witnesses or by the trial Court with regard to the reason and cause for the suicide of the victim girl. PW2 is the Doctor, who examined the petitioner and gave potency certificate. PW3 is the Scientific Officer of the Forensic Department, who gave report Ex.P2. The another Doctor is PW9, who examined the victim and PW10 is the Investigating Officer. The trial Court without any evidence and materials and on its own notion, had come to the conclusion on the undertaking given by the petitioner. Further, the petitioner failed to take any steps to disprove the signature found in the undertaking.

8.Further, the trial Court expected the petitioner to disprove the case and not the prosecution to prove the case beyond all reasonable doubt. It is particular to note that in the undertaking [Ex.P2(A)], there is no witnesses on the side of the petitioner, which is admitted. In [Ex.P2(A)], it is stated that the petitioner and the victim girl were sitting and talking with each other. The victim had committed suicide two years after the occurrence and there is no evidence to show the petitioner is the reason for suicide. The trial Court on its own, had convicted the petitioner without any evidence and materials. The lower Court had gone beyond and had given a finding based on [Ex.P2(A)], how and what was the procedure adopted in marking Ex.P2(A) is not known. The lower appellate Court without assessing the evidence and materials in its right prospective based on the undertaking, had dismissed the appeal.

9.The learned Additional Public Prosecutor appearing for the respondent submitted that in this case, the victim lodged a complaint on 29.08.2010 and the complaint [Ex.P4] is a detailed one. In Ex.P4, PW1 had narrated about the relationship between the petitioner and his daughter and the happenings taken place on 18.03.2010. The undertaking given by the petitioner is that he would marry the victim girl after his sister's marriage. Unfortunately, in the meanwhile, she committed suicide two years after the occurrence. There is no materials for what reason and how the victim committed suicide. The material particulars in the complaint [Ex.P4] is corroborated by PW1 and PW6. Further, PW7 and PW8 are the witnesses to the Panchayat and their evidence is also in conformity to the complaint [Ex.P4]. The petitioner had given an undertaking before the Panchayathars to marry the victim girl, but he failed to do so. These aspects have been clearly spoken by the witnesses PW1, PW6, PW7 and PW8.

10.The learned Additional Public Prosecutor further submitted that the Doctor/PW9, who examined the victim stated that there is absence of hymen and vagina admitted two fingers and the inference is that the petitioner had physical relationship with the victim regularly. On 18.03.2010, PW1 saw the petitioner and the victim in a compromising position and the same was immediately informed to PW8, who informed PW7. Thereafter, on the undertaking given by the petitioner that he would marry the victim girl after his sister's marriage, he was let-off. Immediately after the occurrence, the complaint was not lodged and when the petitioner attempted to cheat the victim, the complaint came to be lodged. On conclusion of the investigation and on examination of the witnesses, charge sheet came to be filed. The trial Court on the evidence and materials produced, had convicted the petitioner. The lower appellate Court on independent appraisal of evidence and materials, had dismissed the appeal, confirming the judgment of the trial Court.

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

12.It is seen that there have been considerable amount of delay in lodging the complaint [Ex.P4]. The Courts below placed heavy reliance on the undertaking given by the petitioner that he would marry the victim, which was notarized. In this case, the notary has not been examined. In the undertaking, there is no witness on the side of the defence and according to the petitioner, this is a got-up document. Further, PW1, PW6, PW7 and PW8 and they were not shown the document and their attention drawn. The evidence of PW6 is in the nature of hearsay. The evidence of PW1 is in contradiction to the undertaking, there is no mention in the evidence as well in the judgment of the trial Court with regard to Ex.P2(A). The Courts below have placed heavy reliance on the undertaking and convicted the petitioner. Further, there are several infirmities in the prosecution case and arguable points involved in the revision. The revision 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 entitled to the relief of grant of suspension of sentence.

13. 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) with two sureties each for a likesum to the satisfaction of the learned Judicial Magistrate No.I, Pollachi 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 once in three months i.e., from the December 2020 on the first working day of English Calendar Month at about 10.30 a.m., till the disposal of the revision. The petition is ordered.

-sd/-
23/11/2020

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 V ADDITIONAL DISTRICT AND SESSIONS COURT,
COIMBATORE.

2 THE JUDICIAL MAGISTRATE NO.I,
POLLACHI.

3 THE CHIEF JUDICIAL MAGISTRATE
COIMBATORE [FOR INFORMATION]

4 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

5 THE INSPECTOR OF POLICE,
ALL WOMAN POLICE STATION,
POLLACHI.

C.C. to M/S.I.ABRAR MOHAMED ABDULLAH Advocate on payment of necessary charges

Order

in
CRL MP.7176/2020

in
CRL RC.1033/2020

Date :23/11/2020

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