

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.11.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.M.P.No.7211 of 2020

in

Crl.A.No.469 of 2020

1.Narayappa
2.Jayalakshmi
3.Venkatesh
4.Sekar @ Rajasekar ... Petitioners

Versus

State by,
The Inspector of Police,
Denkanikottai Police Station,
Krishnagiri District.
(Crime No.267/2015) ... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Section 389(1) of the Code of Criminal Procedure, to release the petitioners on bail by suspending the sentence in S.C.No.107/2017 on the file of the Sessions Judge, Fast Track Mahila Court, Krishnagiri, dated 15.10.2020.

For Petitioners : Mr.K.Thiruvengadam

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 Sessions Judge, Fast Track Mahila Judge, Krishnarigi in S.C.No.107 of 2017, dated 15.10.2020.

2.The petitioners were convicted for offence under Section 306 IPC and sentenced to undergo three years Rigorous Imprisonment each and to pay a fine of Rs.1,000/-, in default, to undergo three months Rigorous Imprisonment.

3.The gist of the case is that PW1 is the sister of the deceased Ravi, who had committed suicide by hanging herself on 09.05.2015

at about 12.00 noon. The daughter of the 1st and 2nd petitioners Gowri was married to Muniraj/PW5, who is the brother of PW1. There was some dispute between Muniraj/PW5 and his wife Gowry and they were not living together. PW1 her brother and sisters to resolve the issue between the husband and wife, approached the petitioners at Aanaikal by way of panchayat. The petitioners informed that they would come to the village of PW1. On 08.05.2015, the petitioners along with 10 to 15 persons had come to the village of PW1 and panchayat was to be held at Muneeswaran Temple. At that time, there was a wordy quarrel aroused and the petitioners group had assaulted the witnesses and also used abusive words. The deceased Kavitha, the younger sister of PW5, was assaulted, her dress were torn, PW5 was also assaulted and the petitioners group fled from the scene. On the next day i.e., on 09.05.2015, the injured Kavitha was in a sober mood and was staying in the house of PW1. PW1 had gone to attend her work, when she came back after the work at about 12.00 noon, she found the deceased Kavitha had committed suicide by hanging, immediately brought her down and PW1 lodged the complaint [Ex.P1] to PW13. PW13 received the complaint, registered an FIR [Ex.P6], visited the scene of occurrence, referred the case to RDO, prepared Observation Mahazar [Ex.P2], conducted Panchayat. Thereafter, the case was referred back to the Police. PW14 took up further investigation, examined the witnesses and on his transfer, PW15 conducted further investigation and filed the charge sheet before the trial Court.

4. During trial, the prosecution examined 15 witnesses and marked 11 documents and 7 material objects. On the side of the defence, DW1 was examined and Ex.D1 was marked. The trial Court on appreciation of the evidence and materials produced, had convicted the petitioners as stated above.

5. The learned counsel for the petitioners submitted that PW1, PW7, PW8 and PW9 are all sisters of the deceased Kavitha. PW5 is the brother of the deceased Kavitha. PW2 is the husband of PW7, PW4 is the brother of PW2 and PW6 is the husband of PW1 and PW10 is the husband of PW8. All the witnesses are close relatives and from one family. The prosecution had not examined any independent witnesses in this case. These witnesses are motivated witnesses. It is admitted that PW5 had eloped with the daughter of 1st and 2nd petitioners when she was minor and the above said witnesses had given torture and separated them. Further after the marriage, the daughter of the 1st and 2nd petitioners was ill-treated and chased away from the matrimonial house. The petitioners were contemplating to proceed against PW5, his brother and sisters and they lodged a complaint to the respondent police. Since the petitioners were not conversant with the place and language, no action was taken by the respondent Police and to cover up misdeeds and escape from the grave offence under the Prevention of Children from Sexual Offence Act, 2012, the petitioners have been falsely implicated in the above case.

6. The learned counsel for the petitioner further submitted that there is a delay in lodging the complaint and no explanation was given. The occurrence is said to have taken place on 08.05.2015, which is the cause and reason for the said Kavitha to commit suicide

is not proved with any tangible material. Though the witnesses claimed that the deceased Kavitha as well, PW5 had gone to the Government Hospital and taken treatment for the assault made on them on 08.05.2015, no documents were produced to substantiate the same. A2 in this case had examined herself as DW1 and marked Ex.D1. The trial Court had not considered the evidence produced and adduced by the defence. Further, the sentence on the petitioners already suspended by the trial Court.

7.The learned Additional Public Prosecutor appearing for the respondent submitted that PW1 is the sister of the deceased Kavitha, who had committed suicide by hanging on 09.05.2015. On the previous day 08.05.2015, panchayat was held at Muneeswaran Temple between the petitioners family and the family members of PW5 for the dispute between PW5 and his wife Gowri. He further submitted that PW5 and his wife Gowri, who is the daughter of 1st and 2nd petitioners developed love affair and both of them were eloped and got married and thereafter, they were living separately for quite some time due to dispute between them. To sort out the issue between them, a panchayat was held on 08.05.2015 near Muneeswaran Temple. The petitioners had come along with 10 to 15 members to panchayat, picked up quarrel and assaulted PW5 and his sister Kavitha (deceased) badly and also used abusive words. The said Kavitha was unable to bear the attack and abuse made on her, on the next day i.e., 09.05.2015, she committed suicide by hanging herself. Thus the petitioners are the cause for her to take extreme step. On registration of the case, PW13 visited the scene of occurrence, examined the witnesses, conducted inquest, handed over the investigation to PW15. PW15 conducted further investigation, on his transfer, PW16 conducted further investigation and filed the charge sheet in this case.

8.The trial Court considering the evidence and materials adduced by the prosecution, convicted the petitioners. The trial Court on considering the prevailing pandemic situation and the age of the petitioners imposed lesser sentence of three years imprisonment.

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

10.It is seen that in this case, except the official witnesses, all are from one family, particularly PW1, PW7, PW8 and PW9 are the sisters of the deceased Kavitha. PW5 is the brother of Kavitha, PW2 is the husband of PW7, PW2 and PW4 are brothers, PW6 is the husband of PW1 and PW10 is the husband of PW8. No independent witnesses are examined in this case. All the witnesses stated about the incident took place on 08.05.2015, which led to Kavitha, who is the sister of PW1, committing suicide, no materials produced to substantiate the alleged assault and abuse on 08.05.2015. Further, all the witnesses admitted that the daughter of 1st and 2nd petitioners Gowri when she was minor was taken away by PW5 got married, when Gowri was a minor and they were living as husband and wife for some time. Later, due to some dispute between them, they got separated and the petitioners had lodged a complaint for kidnapping and abduction. Hence, there was a motive between both the family

members. The 2nd petitioner to substantiate the same had examined herself as defence witness. Further, the abuse and assault is said to have taken place on 08.05.2015 and the occurrence is said to have taken place on next day i.e., 09.05.2015, after 24 hours. There is no material produced for the occurrence on 05.05.2015. Hence, the act of the petitioners cannot be construed to be proximate cause and reason for the deceased Kavitha to commit suicide. The trial Court had already suspended the sentence of the petitioners. Further, there are infirmities in the prosecution case and arguable points involved in the appeal. 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 petitioners herein are entitled to the relief of grant of suspension of sentence.

11. Accordingly, the substantive sentence of imprisonment alone is suspended and the petitioners are directed to be enlarged on bail on condition that the petitioners shall execute a bond for a sum of Rs.5,000/- (rupees Five Thousand only) each with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Fast Track Mahila Court, Krishnagiri, within a period of 15 days from the date of receipt of a copy of this order and on further condition that the petitioners shall appear before the said Court once in three months i.e., from January 2021 on first working day of English Calender Month at 10.30 a.m., till the disposal of the appeal. 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.

सत्यमेव जयते

TO

1 THE SESSIONS JUDGE,
FAST TRACK MAHILA COURT, KRISHNAGIRI

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

WEB COPY

3 THE INSPECTOR OF POLICE,
DENKANIKOTTAI POLICE STATION,
KRISHNAGIRI DISTRICT.

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

Order

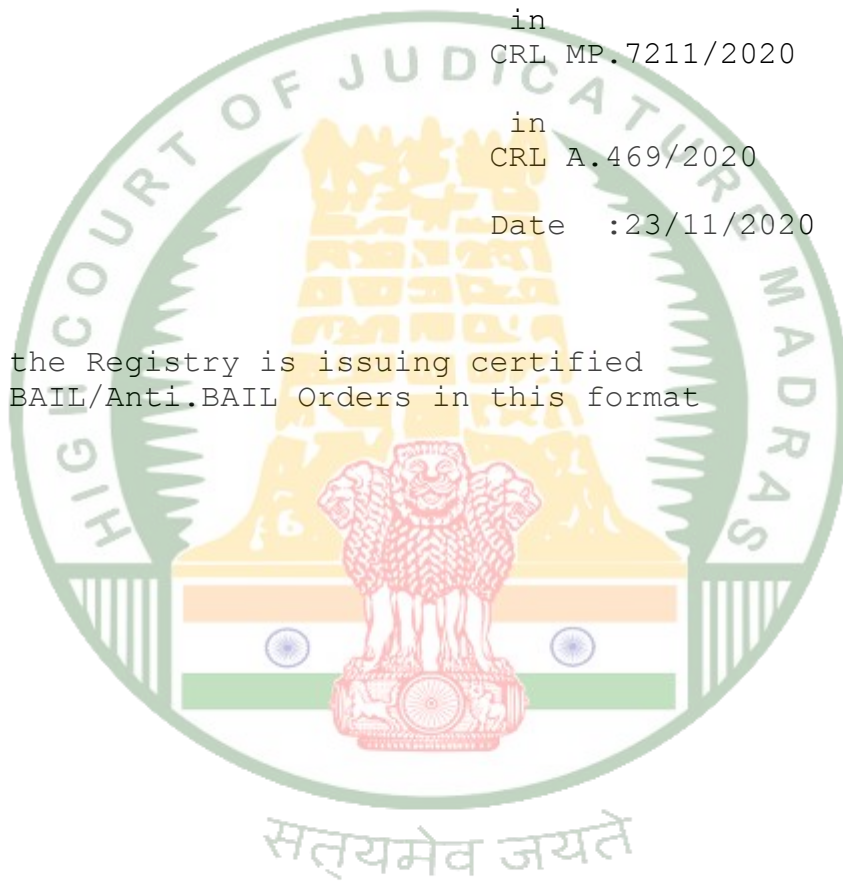
in
CRL MP.7211/2020

in
CRL A.469/2020

Date :23/11/2020

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