

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2020

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH

and

The Hon'ble Mr. Justice D.KRISHNAKUMAR

CRL MP No.13426 of 2019

in Crl.A No. 623 of 2019

Udayalekha

... Petitioner

vs

The State Rep. by
The Inspector of Police,
EF-II, Team III,
CCB Vepery, Chennai,
J3 Gunidy Police Station,
Chennai. (CR.NO.1942/2017)

... Respondent

Petition filed under Section 389(1) & 439 of Cr.P.C. to suspend the sentence of imprisonment imposed on the petitioner by judgment dated 08.08.2019 made in S.C.No.141 of 2018 on the file of VI Additional Sessions Judge, Chennai and enlarge the petitioner on bail pending disposal of the appeal.

For Petitioner .. Mr.Gopinath, Sr.Counsel
for Mr.L.Mahendran

For Respondent .. Mr.K.Prabhakar,
Addl. Public Prosecutor

For Defacto complainant .. Mr.S.Srinivas

ORDER

[Order of the Court was made by M.M.SUNDRESH, J.]

The petitioner has been arrayed as A2 in S.C.No.141 of 2018 on the file of VI Additional Sessions Judge, Chennai. The trial Court by judgment dated 08.08.2019 convicted the petitioner for the offence punishable under Sections 120-B and 302 r/w 109 IPC and sentenced to undergo life imprisonment. Seeking suspension of sentence imposed, the present petition has been filed.

2. The case of the prosecution is that the petitioner and the deceased were the wife and husband. A1 and this petitioner developed intimacy when she visited the meditation centre. She was joined with the meditation centre by the defacto complainant. The further case of the prosecution is that on the date of occurrence, A1 entered into

the house and committed the offence while the petitioner along with the children went out. Pending trial, A1 died. The petitioner has been convicted on 08.08.2019. She has been under incarceration for more than one year and three months as of now.

3. Learned Senior Counsel appearing for the petitioner submitted that the evidence of P.Ws 9,10 and 16 was disbelieved by the Court. This is case of circumstantial evidence. Therefore, there is no substantial material to show the petitioner was seen with A1. Merely because P.Ws. 4 and 5 speak about the intimacy between A1 and the petitioner, a presumption cannot be drawn to attract Section 120-B IPC with respect to conspiracy. Similarly, there is no abetment also involved. For attracting conspiracy or abetment, there must be a material against a person charged. Thus, the petitioner will be entitled to get the sentence suspended, particularly being a lady and under incarceration for more than one year and three months.

4. Learned Additional Public Prosecutor appearing for the State and the learned counsel appearing for the defacto complainant submitted that it is a case where the petitioner along with A1 committed the offence punishable under Section 302 IPC over the deceased, who is none other than her husband. The trial Court considered the relevant materials in rendering conviction. The circumstances have been linked with the events surrounding and, therefore, the petition deserves to be dismissed.

5. Admittedly, the petitioner is a lady and is under incarceration from 08.08.2019 onwards. From the submissions made, we do find existence of relevant issues involved in the appeal. It is a case of circumstantial evidence. Some witnesses, namely, P.Ws 9,10 and 16 have turned hostile. The main accused, namely, A1 died. The petitioner was not available at the place of the occurrence even according to the prosecution. That is the reason why Section 120-B IPC has been framed against her. In the light of the above, we are of the view that the petitioner is entitled to get the sentence suspended.

6. Accordingly, the substantive sentence of imprisonment alone is suspended on condition that the petitioner executes 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 IX Metropolitan Magistrate, Saidapet, Chennai and on further condition that the petitioner shall report before the concerned Court on the first working day of every month at 10.30 a.m. pending appeal.

-sd/-

10/11/2020

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

TRUE COPY

TO

1 IX METROPOLITAN MAGISTRATE
SAIDAPET, CHENNAI

2 THE CHIEF METROPOLITAN
MAGISTRATE, EGMORE, CHENNAI (FOR INFORMATION)

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE INSPECTOR OF POLICE,
EF-II, TEAM III, CCB, VEPERY,
CHENNAI, J3 GUINDY POLICE
STATION, CHENNAI.

5 THE SUPERINTENDENT,
CENTRAL PRISON, SPECIAL PRISON FOR WOMEN,
PUZHAL, CHENNAI

C.C. to M/S. L.MAHENDRAN Advocate on payment of necessary
charges Sr.7454

Order

in
CRL MP No.13426 of 2019

in Cr1.A No. 623 of 2019

Date :10/11/2020

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RVR 10/11/2020

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