



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Thirty First day of August Two Thousand Twenty

PRESENT

The Hon`ble Mr Justice K.KALYANASUNDARAM
and
The Hon`ble Mrs.Justice T.KRISHNAVALLI

CRL MP(MD) No.3858 of 2020
IN
CRL A(MD) No.184 of 2020

M.BALAMURUGAN

... PETITIONER/APPELLANT/ACCUSED

Vs

STATE THROUGH
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
TUTICORIN,
TUTICORIN DISTRICT.
(CRIME NO.53/2015)

... RESPONDENT/RESPONDENT/COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence passed by the Learned Records in SC.324/2016 on the file of the Mahila and Sessions Judge, Tuticorin through a judgment dated 15/11/2019.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.KA.RAAMAKRISHNAN, Advocate for the petitioner and of MR.R.ANANDHARAJ, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

[Order of the Court was made by K.KALYANASUNDARAM, J.]

The petitioner is the sole accused in Sessions Case No.324 of 2016, on the file of the Mahila Court, Tuticorin. He was charged for the offence under Sections 376(2)(1) and 506(i) I.P.C. The Trial Court, by Judgment dated 15.11.2019, convicted and sentenced him to undergo life imprisonment and to pay a fine of Rs.5,000/- (Rupees five thousand only), in default to undergo six months rigorous imprisonment for the offence under Section 376(2)(1) I.P.C. and to undergo rigorous imprisonment for a period of two years for the offence under Section 506(i) I.P.C.



2. Aggrieved over the conviction and sentence, the petitioner has preferred the present criminal appeal. Pending appeal, the petitioner has filed this criminal miscellaneous petition seeking to suspend substantive sentence of imprisonment imposed on him by the Mahila Court in the above sessions case.

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3. It is the prosecution case that on 11.11.2015, P.W.1 / victim was found vomiting and hence, she was taken to a Hospital by her father P.W.2, where the Doctor found P.W.1 was pregnant. It is the further case of the prosecution that when P.W.2 questioned P.W.1, she stated that about two months ago, the petitioner committed rape on her.

4. The learned counsel for the petitioner would argue that the petitioner and P.W.1 are relatives and also neighbours. It is further contended that P.W.1 was 26 years old at the time of the occurrence and the physical relationship between P.W.1 and the petitioner continued for sometime with her consent. It is also argued that P.W.1 has admitted in her evidence that if she was not pregnant, she would not have revealed the relationship to anyone else. It is further submitted by the learned counsel for the petitioner that without prejudice to the rights of the petitioner, he is ready to pay a sum of Rs.1,00,000/- (Rupees only lakh only) as compensation to P.W.1.

5. Per contra, Mr.R.Anandharaj, learned Additional Public Prosecutor, would submit that P.W.1 is a deaf and dumb and she has categorically deposed before the Trial Court that she was raped by by the petitioner and hence, no indulgence can be shown on the petitioner.

6. Heard the rival submissions and perused the materials available on record.

7. In this case, it is not disputed that the petitioner and P.Ws.1 and 2 are relatives and she was major at the time of the occurrence. A perusal of the evidence of P.Ws.1 and 2 would reveal that with the consent of P.W.1, the petitioner was having physical relationship with her.

8. Considering the above facts and circumstances of the case, we are inclined to suspend the substantive sentence of imprisonment imposed on the petitioner. Accordingly, the criminal miscellaneous petition is allowed and the substantive sentence of imprisonment imposed on the petitioner alone is suspended, subject to the following conditions:

- i. The petitioner is directed to be enlarged on bail on executing a bond for Rs.10,000/- (Rupees ten thousand only) with two sureties, of whom, one



should be a blood related surety, each for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Tuticorin.

ii. The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the Committal Court may obtain a copy of their Aadhar card or Bank passbook to ensure their identity.

iii. The petitioner shall appear before the learned Judicial Magistrate No.I, Tuticorin, at 10.30 a.m. on the first working day of every English Calendar month until further orders.

iv. The petitioner shall pay a sum of Rs.1,00,000/- (Rupees one lakh only) directly to P.W.1 in the presence of the respondent Police, however, without prejudice to his rights.

v. It is made clear that the petitioner shall not disturb the victim P.W.1 and her father P.W.2.

vi. On any particular date, if the petitioner is not able to appear, leave is granted to the petitioner to file an application under Section 317 Cr.P.C. and appear before the Committal Court on any other day, as determined by the Committal Court, in lieu of the day on which they would absent.

sd/-
31/08/2020

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/ /2020
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

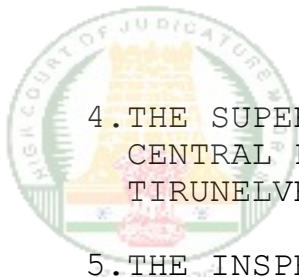
TO

1.THE MAHILA AND SESSIONS JUDGE,
TUTICORIN

2.THE JUDICIAL MAGISTRATE NO.I,
TUTICORIN.

3.DO THRO'THE CHIEF JUDICIAL MAGISTRATE,
TUTICORIN DISTRICT.

<https://hcservices.ecourts.gov.in/hcservices/>



4.THE SUPERINTENDENT,
CENTRAL PRISON, PALAYAMKOTTAI,
TIRUNELVELI DISTRICT.

5.THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
TUTICORIN, TUTICORIN DISTRICT.

6.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.3858 of 2020
IN
CRL A (MD) No.184 of 2020
Date :31/08/2020

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