



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated:07.01.2020

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THE HONOURABLE MRS. JUSTICE **T.KRISHNAVALLI**

Crl.RC(MD)No.565 of 2019

Sankar : Petitioner/Petitioner/A1

Vs.

The State represented by its
The Inspector of Police,
Vallam All Women Police Station,
Thanjavur District. : Respondent

Prayer: Criminal Revision filed under Section 397 r/w 401 of the Code of the Criminal Procedure against the order passed in Crl.A.No.132 of 2018, dated 10.06.2019 on the file I Additional District and Sessions Court, Thanjavur, confirming the judgment of the conviction passed in C.C.No.475 of 2011 on the file of the Judicial Magistrate No.II, Thanjavur.

For Petitioner : Mr.A.Arun Prasad

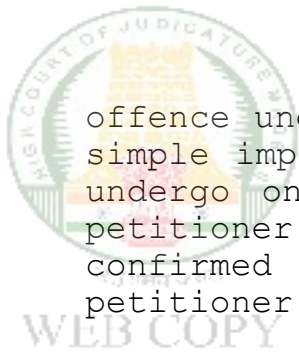
For Respondent : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Crl.Side)

J U D G M E N T

This Criminal Revision is filed against the order passed in Crl.A.No.132 of 2018, dated 10.06.2019 by the I Additional District and Sessions Court, Thanjavur, confirming the judgment of the Judicial Magistrate No.II, Thanjavur, passed in C.C.No.475 of 2011, dated 11.09.2018.

2.According to the prosecution, the accused had given false promise to marry the de-facto complainant and had sexual intercourse on several occasions and due to which, the de-fact complainant had begotten a female child. The Inspector of Police attached to Vallam All Women Police Station, Thanjavur has filed a final report against the accused examining the witnesses.

3.The trial court, after appreciation of the entire materials available on record, convicted the petitioner/accused for the
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offence under section 417 IPC and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one year simple imprisonment. Challenging the same, the petitioner preferred appeal. The first appellate court had also confirmed the findings of the trial court. Against which, the petitioner is before this court.

4. Heard both sides and perused the materials available on record.

5. In this case, even though the learned counsel appearing for the appellant/accused argued on merits, but he has stated that in the interest of the welfare of the children, both the petitioner family and victim family compromised all the issues between them and both the families are taking care and interest towards the children namely Dhanalakshmi and Kasthuri and and the petitioner/accused is ready to deposit a sum of Rs.50,000/- each as fixed deposit in the name of Dhanalakshmi and Kasthurai for their peaceful future and also he undertakes that he would provide proper care and interest with regard to his daughters and provide necessary support in the future, apart from the fixed deposit.

6. Further, the learned counsel appearing for the petitioners submitted the decision reported in (2007)2 MLJ (Crl) 70 (Raju and another Vs. Inspector of Police, New Hope Police Station). In that case, it has been held as follows:-

"It is well settled that while awarding sentence the effect of compromise can be taken into consideration. It has been stated that the appellant has remained in custody for a period of 14 months and there is no allegation that he assaulted the deceased."

7. In AIR 2009 SC 675 (Ishwar Singh Vs. State of Madhya Pradesh), it has been held as follows:-

"13. Now, it cannot be gainsaid that an offence punishable under Section 307 IPC is not a compoundable offence. Section 320 of the Code of Criminal Procedure, 1973 expressly states that no offence shall be compounded if it is not compoundable under the Code. At the same time, however, while dealing with such matters, this Court may take into account a relevant and important consideration about compromise between the parties for the purpose of reduction of sentence."

14. In Jetha Ram Vs. State of Rajasthan, (2006) 9 SCC 255, Mrugesan & Ors. V. Ganapathy



Velar, (2001)10 SCC 504 and Ishwarlal V. State of M.P., JT 1988(3) SC 366(1), this Court, while taking into account the fact compromise between the parties, reduced sentence imposed on the appellant-accused to already undergone, though the offences were not compoundable. But it was also stated that in Mahesh Chand V. State of Rajasthan, AIR 1988 SC 2111, such offence was ordered to be compounded.

15. In our considered opinion, it would not be appropriate to order compounding of an offence not compoundable under the Code ignoring and keeping aside statutory provisions. In our judgment, however, limited submission of the learned counsel for the appellant deserves consideration that while imposing substantive sentence, the factum of compromise between the parties is indeed a relevant circumstance which, the Court may keep in mind."

8. Further, in the judgment reported in **2012 CRL.LJ.667** (Culab Das and others Vs. State of M.P), the Hon'ble Apex Court as follows:-

8. Having said that we are of the view that the settlement/compromise arrived at between the parties can be taken into consideration for the purpose of determining the quantum of sentence to be awarded to the appellants. That is precisely the approach which this Court has adopted in the cases referred to above. Even when the prayer for composition has been declined this Court has in the two cases mentioned above taken the fact of settlement between the parties into consideration while dealing with the question of sentence. Apart from the fact that a settlement has taken place between the parties, there are few other circumstances that persuade us to interfere on the question of sentence awarded to the appellants. The incident in question had taken place in the year 1994. The parties are related to each other. Both Appellant nos. 2 and 3 were at the time of the incident in their twenties. It is also noteworthy that the incident had led to registration of a cross case against the complainant party in which the trial Court has already convicted Veeraji and others for offences punishable under Sections 325/34 and 323 IPC and sentenced them to undergo imprisonment for a period of two years and a fine of Rs.300/- and imprisonment of six months under Section 323 IPC. We are told that the parties having settled the matter, will approach the High



Court for an appropriate order in the appeal pending before it. More so, the appellants have already served substantial part of the sentence awarded to them.

9.Keeping in mind the above citations and the settlement arrived at between the parties as well as taking into account for determining the quantum of sentence and the accused served substantive part of sentence, it is held that the sentence imposed on the petitioner/accused is reduced the sentence to the period already undergone. It is seen from the records that the petitioner/accused was in judicial custody for 35 days.

10.Accordingly, this Criminal Revision is **partly allowed**, by reducing the sentence awarded to the petitioner/accused to the sentence already undergone by him. In respect of fine amount, the findings of the trial court is confirmed.

Sd/-

Assistant Registrar (P&A)

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/ /2020

Sub Assistant Registrar(CS)

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To

1.The Ist Additional District and Sessions Judge,
Thanjavur.

2.The Inspector of Police, Valam All Women Police Station,
Thanjvur District.

3.The Director General of Police,
Mylapore, Chennai - 4.

4.The Superintendent of Prison,
Central Prison, Trichy.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.A.ARUNPRASAD, Advocate (SR-514[F] dated 07/01/2020)

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