

**BAIL SLIP**

Sivakumar, Appellant/Sole Accused viz., S/o. Sethuraman Male, 45 years was released on Bail vide order of this court dated 22.07.2015 made in MP(MD)No.1 of 2015 in Cr1.A (MD)No.159 of 2015.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28.02.2020

CORAM

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

Cr1.A. (MD)No.159 of 2015

Sivakumar : Appellant/Sole Accused

Vs.

1. State,
rep. by the Inspector of Police,
All Women Police Station,
Aranthangi,
Pudukkottai District.
(Crime No.9 of 2012) : 1st Respondent/Complainant
2. Latha : 2nd respondent/De-facto
(2nd respondent impleaded
as per the order, dated
28.02.2020 made in
Cr1.MP(MD)No.2164 of 2020
in Cr1.A(MD)No.159 of 2015) Complainant/PW1

Prayer: Criminal Appeal filed under Section 374(2) of the Criminal Procedure Code against the judgment, dated 02.07.2015 passed by the Additional District Sessions Judge, Mahila Court, Pudukkottai, in S.C No.130 of 2013 and acquit the Appellant.

For Appellant : Mr.D.Ramesh Kumar

For 1st Respondent : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate
(Criminal Side)

For 2nd Respondent : Mr.Ramu

J U D G M E N T

This Criminal Appeal is directed against the judgment, dated 02.07.2015 passed by the Additional District Sessions Judge, Mahila Court, Pudukkottai, in S.C No.130 of 2013.

2. The case of the prosecution is that the appellant/accused made a false promise to PW1 to marry her and on false promise, he had a sexual intercourse with PW1 and due to which, she became



pregnant and subsequently, the accused refuse to marry PW1. The Inspector of Police attached to All Women Police Station, Aranthangi, Pudukkottai District has filed a final report against the accused examining the witnesses.

3. The trial court, after appreciation of the entire materials available on record, has convicted the accused for the offence under sections 417 and 420 IPC and sentenced him to undergo rigorous imprisonment for one year and to pay a fine of Rs.1,000/-, in default to undergo rigorous imprisonment for three months for the offence under section 417 IPC and to undergo rigorous imprisonment for three years and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for six months for the offence under section 420 IPC. Aggrieved by the judgment of the trial court, the appellant/accused is before this court.

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

5. It is mainly argued on the side of the appellant/accused that the appellant and the de-facto complainant are belongs to same village and due to the intervention of the village elders, the dispute between them is amicably settled and the 2nd respondent/de-facto complainant have no objection to compound the said offence and with the help of elder members of the family, the matter has been settled out of court and they have arrived at compromise between them and as per the settlement, the appellant paid Rs.4,00,000/- as compensation to the 2nd respondent/de-facto complainant/PW1. Further, the learned counsel appearing for the appellant/accused submitted the decision reported in (2007)2 MLJ (Cr1) 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."

6. 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."

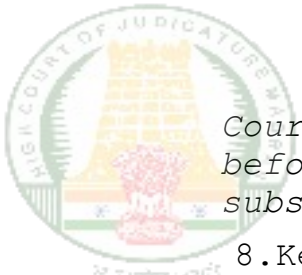


14. In *Jetha Ram Vs. State of Rajasthan*, (2006) 9 SCC 255, *Mrugesan & Ors. V. Ganapathy Velar*, (2001) 10 SCC 504 and *Ishwarlal V. State of M.P.*, JT 1988(3) SC 366(1), this Court, while taking into account the fact compromise between the parties, reduced sentence imposed on the appellant-accused 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."

7. 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.

8. 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 appellant/accused is reduced the sentence to the period already undergone.

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

Sd/-

Assistant Registrar (crl side)

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/ /2020

Sub Assistant Registrar (CS)

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To,

1. The Additional District Sessions Judge,
Mahila Court,
Pudukkottai

2. The Judicial Magistrate, Aranthangi.

3. The Inspector of Police,
All Women Police Station,
Aranthangi,
Pudukkottai District.

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

Copy to

The Section Officer, Criminal Section,
Madurai Bench of Madras High Court, Madurai (2 copies)

+1 CC to Mr.D.RAMESHKUMAR, Advocate (SR-9329[F] dated 28/02/2020)

Crl.A.(MD)No.159 of 2015
28.02.2020