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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.01.2022

CORAM:

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.M.P.No.1673 of 2020

in

Crl.A.No.80 of 2020

Mahendiran

... petitioner

..Vs..

State Represented by
The Inspector of Police,
Nedungadu Police Station,
Puducherry.

... Respondent

PRAYER: Criminal Miscellaneous filed under Section 389 (1) of Cr.P.C, to suspend the conviction of sentence passed by the learned District and Sessions Judge, Karaikal in S.C.No.4 of 2017 vide order dated 20.09.2019.

For petitioner : Mr.R.Sreedhar

For Respondent : Mr.A.Balamurugan
Public Prosecutor,Puducherry (crl.side)

O R D E R

This Criminal Miscellaneous Petition has been filed to suspend the conviction of sentence passed by the learned District and Sessions Judge, Karaikal in S.C.No.4 of 2017 vide order dated 20.09.2019.

2.In and by the judgment of the trial court, the Petitioner/accused was convicted for the offence under section 376 (1) IPC and sentenced to undergo 10 years R.I. with a fine of Rs.10,000/- and in default to undergo one year S.I. and convicted for the offence under section 417 IPC, sentenced to undergo one year R.I. With a fine of Rs.5,000/- in default to undergo 3 months S.I. and ordered to undergo both the punishments concurrently and against which, the present appeal has been filed.

3.The brief facts of the case :



The Inspector of Police, Nedungadu Police Station had laid a final report to the Judicial Magistrate No.2, Karaikal for offence under Sections 376(1) and 417 of I.P.C. As per the final report, on 06.11.2016 at about 19.30 hours, the accused had with the false promise of marriage induced the victim girl and had taken her from her house and during the same course of transaction on 07.11.2016 at 01.00 hours at Aruna Cement Godown cum office, Madakady, Karaikal, the accused with sexual intention had sexual intercourse forcibly with the victim girl against her will. Thus, finding the action of the accused are punishable offence under section 376(1) and 417 IPC, the respondent filed the final report. The case was taken up in P.R.C.No.1/2017 by Judicial Magistrate No.2, Karaikal, and after cognizance of the said offences and after furnishing the copies relied on by the prosecution under section 207 Cr.P.C. the learned Magistrate committed the case to the trial court.

4. On appearance of the accused, the trial court framed the charges against the accused for the offences under sections 376(1) and 417 IPC. When the accused was questioned, the accused denied the same and sought to be tried. The prosecution examined P.W.1 to P.W.11 and marked Exs.P1 to P12 and M.O.1 to M.O.11. When the accused was questioned under section 313 Cr.P.C., he denied the charges. However, no evidence was let in on the side of the defence. The trial court found the petitioner guilty for the offence under sections 376(1) and 417 IPC and convicted and sentenced him as stated above.

5. Learned counsel for the petitioner would submit that a case of consensual affair between two grown up adults had been projected as a case of rape and cheating. The prosecutrix/P.W.2 and the petitioner are neighbours. Admittedly as per the evidence of P.W.2, she is aware that the petitioner is a married man and has got two children. Thereby, the victim, a grown up woman had knowingly continued the relationship with the petitioner and was well aware of the consequences. The medical evidence of the victim does not support the case of the prosecution. There is absolutely no evidence to show that the petitioner committed sexual intercourse with her forcibly against her will. Further P.W.7, the doctor who had medically examined the victim girl in respect of the sexual offences immediately after the occurrence had stated that the victim girl had informed her that she had sexual intercourse for several times. He would further submit that there are arguable points available in the Criminal Appeal Case, which is not likely to be taken for final hearing in the near future and the Petitioner/accused has got a fair chance of succeeding in the Criminal Appeal Case. He would further submit that during the period of investigation, the petitioner was in custody for four months and thereafter, after conviction on 20.09.2019, the petitioner is continued incarceration and hence, the sentence imposed against the Petitioner/accused may be suspended and enlarged on bail.



6.Mr.A.Balamurugan, learned Public Prosecutor (Pondicherry) would submit that the petitioner, who is a neighbour and married man having two kids, had induced the victim girl on the false promise of marrying her and had taken her to a secluded place and forcibly had sexual intercourse against her will. He would further submit that the prosecution examined P.W.1 to P.W.11 and marked Exs.P1 to P12 and M.O.1 to M.O.11 and the trial court finding that the prosecution had proved the case beyond all reasonable doubts, had rightly found the petitioner guilty and thereby, he would oppose for grant of suspension of sentence to the petitioner.

7. Heard the learned counsel for the petitioner and perused the materials on record.

8.Admittedly, P.W.2 the victim was aged 19 years on the date of occurrence. Even as per her evidence, she had deposed that the petitioner is a neighbour and she is aware that the petitioner is a married man having two children. Further P.W.7 Doctor Uma Maheswary, who has examined the victim with regard to the sexual offences had deposed that at the time of examination, the victim girl had told her that she had sexual intercourse for several times. This court is of the opinion that the petitioner has made out a case for grant of suspension of sentence and the sentence of imprisonment can be suspended on certain conditions.

9.Accordingly, till the disposal of the Criminal appeal, the reliefs of suspension of sentence and bail are granted to the petitioner/accused, on the following conditions :-

- i. The petitioner is ordered to be released on bail on condition to execute his own bond for a sum of Rs.15,000/- (Rupees Fifteen Thousand only) before the Superintendent of the concerned prison/Jailor concerned, in which the petitioner has been confined and thereafter, on his release, the petitioner shall furnish two sureties, each for a like sum to the satisfaction of the learned District and Sessions Judge, Karaikal within 15 days from the date of commencement of the court's normal functioning, failing which the bail granted by this court shall be dismissed automatically and on further condition that:
- ii. The petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m., until further orders.



10. The Criminal Miscellaneous Petition is ordered accordingly.

-sd/-

25/01/2022

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.

TO

1 THE DISTRICT AND SESSIONS
JUDGE, KARAIKAL.

2 THE INSPECTOR OF POLICE,
NEDUNGADU POLICE STATION,
PUDUCHERRY.

3 THE PUBLIC PROSECUTOR
PUDUCHERRY.

4 THE SUPERINTENDENT,
CENTRAL PRISON, PUDUCHERRY.

+1 C.C. to M/S.R.SREEDHAR Advocate on payment of necessary
charges SR.NO.1141

Order

in
CRL MP.1673/2020
in
CRL A.80/2020

Date :25/01/2022

From 7.2.2001 the Registry is issuing certified
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RW 25/01/2022