

BAIL SLIP

The Petitioner/Appellant namely Saravana kumar, S/o.Mani was directed to be released on bail as per the order of this Court dated 03.09.2018 in CrI.M.P.No.8201/2017 in CrI.A.No.379/2017 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2022

CORAM:

THE HON'BLE Dr. JUSTICE G.JAYACHANDRAN

CrI.A.No.379 of 2017

Saravana Kumar

.. Appellant

/versus/

State rep.by

The Inspector of Police,
Perunthurai Police Station,
Erode District.

(Crime No.150 of 2013)

.. Respondent

Prayer: Criminal Appeal has been filed under Section 374(2) of Criminal Procedure Code praying to set aside the Judgement passed in S.C.No.55 of 2015 on the file of Sessions Court, Mahalir Neethimandram (Mahila Fast Track Court), Erode dated 09.12.2015.

For Appellant : M/s.T.Muruganantham

For Respondent : Mr. S.Udaya Kumar
Government Advocate (CrI.Side)

J U D G M E N T

Heard the learned counsel for the appellant and the Government Advocate (Criminal Side) appearing for the respondent.

2. This appeal is preferred against the conviction of the sole accused for the offences under Sections 366 and 498 of IPC. The complaint came to be registered on the complaint given by one Shanmugam alleging that on 02.03.2013 at 08.00 A.M., his

wife Bharathi aged 20 years took her daughter Shivani Priya aged 3 years to Coimbatore for Speech Therapy treatment, she being a special child. When he called her over phone at about 11.00 A.M., his wife Bharathi informed that she was in a hotel at Gandhipuram bus stand and she will soon return home. However, when he again called his wife, her cell phone was switched off. Where he enquired at Speech Therapy center, they informed him that his wife and daughter left the center at 12.00 noon. Disclosing the colour of her dress and apparels which she was wearing, when she left home in the morning of that day, a complaint was lodged for missing of his wife and his child. The respondent police on receipt of it registered a case in Crime No.150 of 2013 under Section 174 of Cr.P.C., (Women Missing).

3. On 11.03.2013 the respondent police, while on surveillance at Perunthurai new bus stand, traced the missing woman and the child along with the accused and thereafter the charges were altered to under Section 366 of IPC. Statement of witnesses were recorded and the final report filed against the appellant herein. On committal to the Court of Sessions i.e., Mahila Fast Track Court, Erode, case was taken on file as Special S.C.No.55 of 2015.

4. The prosecution has examined 4 witnesses and marked 3 exhibits. The Trial court on considering the evidence, convicted the accused and sentenced to under go 10 years R.I and pay a fine of Rs.100/- in default to pay the fine amount, to undergo simple imprisonment for 6 months for offence under Section 366 of IPC and 2 years rigorous imprisonment and pay a fine of Rs.100/- in default to pay the fine amount, to undergo simple imprisonment for 6 months under Section 498 of IPC.

5. The Judgment of the Court below is strongly challenged by the appellant on the ground that the Trial Court miserably failed to consider the fact that the wife of the defacto complainant had gone along with the appellant on her own and there was no threat or compulsion or abduction as alleged by the prosecution. The Court below failed to take note of the fact that admittedly the wife of the defacto complainant voluntarily traveled along with the appellant in public transport and stayed with the appellant for nearly 12 days. She went to several places and only after they spent all the money, decided to return back to home. The appellant was found along with the wife and daughter of the defacto complainant in public place standing freely. Therefore when there is no element of force or threat or coercion on the part of the appellant exercised upon P.W.2 (wife of the defacto complainant) to go with him along

with his daughter. The ingredient of abduction or ingredient of enticing or taking away with intent to marry to punish under Section 366 or Section 498 of IPC is not made out.

6. The learned counsel appointed by the legal aid submitted that reading the evidence of PW1/Defacto complainant and PW2 wife of the defacto complainant would reveal that even if the deposition of these two witnesses is assumed to be true, it does not attract the ingredients of Section 366 and Section 498 of IPC, for which the accused was charged and convicted. The learned counsel would further submit that except P.W.1 and P.W.2 who are husband and the wife, the prosecution has not chosen to examine any other independent witness. Only the independent witness named N.Thirunavukarasu (P.W.3) has turned hostile and therefore the case of the prosecution has not been proved beyond doubt.

7. The Government Advocate (Criminal Side) appearing for the respondent read out the deposition which lend support to the prosecution to convict the accused for offence under Sections 366 and 498 of IPC.

8. As per F.I.R., Ex.P1 was registered based on the complaint given by PW1, it is a complaint about missing of women and child. At the time the complaint lodged there was no suspicion of any abduction by force. Only after securing the appellant, PW2 and her daughter on 11.03.2013 from Perunthurai New Bus stand charge has been assigned and the final report filed against this appellant. P.W.2 who is alleged to have been abducted, neither in chief examination nor in cross examination has stated that she was forcibly taken away by the appellant against her wish and she was under his detention till she was rescued. In fact, the tenor of her deposition clearly indicates that she voluntarily accompanied the appellant. From Coimbatore she has gone to Kaveripattinam in bus along with the appellant, thereafter gone to Namakkal, then Vellore and on 10th night by 7'o clock from Vellore returned to Perunthurai and reached Perunthurai on 11.03.2013 at about 05.00 A.M., When her evidence is tested with the deposition of her husband PW1 and his complaint, as per the deposition of PW1, he called PW2 on 02.03.2013 at 11.00 A.M., and P.W.2 answered his call. She informed him that she was in Speech Therapy Class, again when he called her at 01.45 P.M., she informed him that she and her daughter are in hotel taking food and will return home soon. However, she did not return till date evening, hence the complaint of women and child missing. Whereas in the complaint he has stated P.W.2 called him at 01.45 P.M., and informed that

she is in the hotel. This part of the P.W.1 deposition goes contrary to the complaint which is marked as Ex.P1. Further the evidence of P.W.1 that he called his wife at 01.45 P.M on 02.03.2013 and she attended his call is contrary to the evidence of P.W.2 that she and the accused went to the hotel and had food and thereafter the accused forcibly took her to Kauveripattinam. If there was any telephonic conversation took between P.W.1 and P.W.2 at 01.45 P.M., then the evidence of P.W.2 that at 01.00 P.M. the accused came to Cheran Towers and took her to hotel after getting food for her, he promised to marry her forcible took to Kaveripattinam must be a patent lie. Thus, neither the F.I.R. nor the deposition of the P.W.1 nor the deposition of P.W.2 inspires the confidence of this Court to make out any offence which could be punishable under Section 366 or Section 498 of IPC.

9. The Trial court miserably failed to appreciate the evidence properly and had jumped to the wrong conclusion which has led to miscarriage of justice. Therefore the judgment of conviction and sentence passed by the trial Court in Special S.C.No.55 of 2015 dated 09.12.2015 is set aside. The appellant is acquitted of all charges. Fine amount, if any, paid by the appellant shall be refunded to the appellant and if the appellant. Bail bond, if any, executed by the accused shall stand canceled. Accordingly, the Criminal Appeal is allowed.

Sd/-

Assistant Registrar(CS-VII)

// True Copy //

Sub Assistant Registrar

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To

1.The Sessions Judge, Sessions Court,
Mahalir Neethimandram
(Mahila Fast Track Court),
Erode.

2.The Judicial Magistrate,
Perunthurai.

3.The Mahila Court Judge,
Erode.

4.The Chief Judicial Magistrate,
Erode.

5.The Superintendent,
Central Prison,
Coimbatore.

6.The Inspector of Police,
Perunthurai Police Station,
Erode District.

7.The Public Prosecutor,
High Court, Madras.

Copy to: The Section Officer,
Criminal Section(Records)
High Court, Madras.

+1cc to Mr.T.Muruganantham, Advocate SR.No.38785

Crl.A.No.379 of 2017

BR(CO)
CB(18/07/2022)