



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

Tuesday, the Eighteenth day of October Two Thousand and Twenty Two

PRESENT

The Hon`ble Mrs.Justice J.NISHA BANU

and

The Hon`ble Mr.Justice N.ANAND VENKATESH

Crl.M.P.(MD)No.9795 of 2022

in

Crl.A.(MD)No.514 of 2022

1 MANIKANDAN @ MANIVANNAN

2 THANGATHAI

3 MALATHI

4 KING

5 LATTUTHAI

... APPELLANT/ACCUSED NO.1,2,4,5,6

Vs

THE STATE REP.BY,
THE DEPUTY SUPERINTENDENT OF POLICE,
USILAMPATTI SUB DIVISION,
USILAMPATTI TOWN POLICE STATION,
MADURAI DISTRICT.
(CRIME NO.119 OF 2014)

... RESPONDENT/COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the Sentence imposed by the judgment dated. 22.06.2022 in made in S.C.No. 383 of 2014 on the file of the Sessions Judge, Mahila Court, Madurai and enlarge the petitioners on bail pending disposal of the above Crl.A.

PRAYER IN Crl.A.(MD)No.514 of 2022:

Pleased call for the records relating to the judgment dated 22.06.2022 made in S.C.No.383 of 2014 on the file of Sessions Judge, Mahalir Court, Madurai and set aside the conviction and sentence imposed against petitioners/A1,A2,A4,A5,A6 and allow above appeal by acquitting petitioner.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.M.AJMAL KHAN, Senior Counsel for M/S.AJMAL ASSOCIATES, for the petitioners and of M/S.S.MEENAKSHI SUNDARAM, Additional Public Prosecutor on behalf of the Respondent the court made the following order:-



This Criminal Miscellaneous Petition has been filed by Accused Nos.1, 2, 4, 5 and 6, seeking to suspend the sentence imposed on the petitioners, by judgment and order dated 22.06.2022 passed in S.C.No.383 of 2014 on the file of the Sessions Judge, Mahalir Court, Madurai and to enlarge the petitioners on bail pending disposal of the above appeal.

2. The petitioners have filed the above appeal against the order and judgment of the learned Sessions Judge, Mahalir Court, Madurai made in S.C.No.383 of 2014, whereby the petitioners were convicted and sentenced in the following manner:

(a) The first petitioner was found guilty for the offences under Sections 498(A) and 304-B IPC and convicted and sentenced to undergo 3 years rigorous imprisonment for the offence under Section 498(A) IPC and imposed a fine of Rs.2,00,000/- in default to undergo 6 months simple imprisonment and convicted and sentenced to undergo life imprisonment for the offence under Section 304-B IPC.

(b) The petitioners 2, 4, 5 and 6 were found guilty for the offences under Sections 498(A) and 304-B IPC and convicted and sentenced to undergo 3 years rigorous imprisonment for the offence under Section 498(A) and imposed a fine of Rs.5,000/- each, in default to undergo 6 months simple imprisonment and convicted and sentenced to undergo 7 years rigorous imprisonment for the offence under Section 304-B IPC. The accused Nos.2, 4, 5 and 6 were ordered to run the sentence of imprisonment concurrently.

3. The learned Senior Counsel appearing on behalf of the petitioners submitted that the Court below did not properly appreciate the facts of the case and bring the same within the ingredients of Section 304-B IPC. He submitted that the demand for dowry is stated to have taken place in the year 2010 and thereafter, the deceased had come back to the matrimonial home and she was living with the first petitioner. Once again, she left the matrimonial home on 02.01.2014. The incident of self immolation took place on 02.04.2014, immediately after the deceased received summons from the Court, pursuant to the divorce proceedings initiated by the first petitioner. The Court below was swayed by the evidence of P.W.1 to P.W.3, who are interested witnesses. The learned Senior Counsel further pointed out to the fact that the deceased had suffered 100% burns and she could not have been in a conscious state of mind to give a dying declaration and hence, the Court below went wrong in relying upon the dying declaration along with the evidence of P.W.1 to P.W.3. Therefore, the conviction and sentence imposed by the Court below requires interference by this Court.



4. Per contra, the learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that the facts of the present case clearly fell within the ingredients of Section 304-B IPC. To substantiate the same, the learned Additional Public Prosecutor relied upon the dying declaration of the deceased and also the evidence of P.W.1 to P.W.3. He further submitted that once the ingredients under Section 304-B IPC is satisfied, automatically ingredients under Section 498 (A) IPC also gets satisfied. Considering the serious nature of the crime against the women, the learned Additional Public Prosecutor vehemently opposed this petition and sought for dismissal of the same.

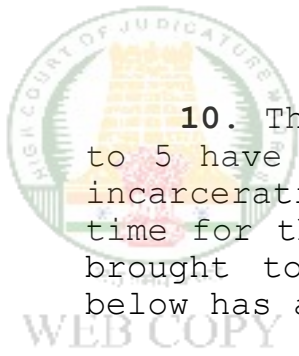
5. This Court has carefully considered the submissions made on either side and the materials available on record. This Court has also carefully gone through the Order and Judgment passed by the Court below.

6. The learned Counsel on record for the petitioners sought permission of this Court to withdraw this petition insofar as the first petitioner is concerned. Hence, this petition is dismissed as withdrawn insofar as the first petitioner is concerned.

7. The specific case of the prosecution is that the accused persons were demanding for 10 sovereigns of gold jewels and 1/3 share in the retirement benefits of the father of the deceased. Initially, this demand was made in the year 2010 and according to the case of the prosecution, the demand got aggravated only after the death of the father of the deceased. The main issue, that requires consideration of this Court in the above appeal, is as to the whether there was cruelty or harassment on the deceased, soon before her death in connection with the demand of dowry and that led to death of the woman other than in normal circumstances.

8. The second petitioner is the mother-in-law of the deceased, the third petitioner is the sister-in-law of the deceased, the fourth petitioner is the husband of the third petitioner and the fifth petitioner is the mother of the fourth petitioner. How far these petitioners can be roped in for the offence under Section 304-B IPC, has to be considered depending upon the material available on record.

9. The demand that is said to have been made, when the deceased left on 02.01.2014, was a demand, which was made even in the year 2010. Thereafter, the deceased had come to the matrimonial home and she was living with the first petitioner. The learned Senior Counsel appearing on behalf of the petitioners also pointed to the other evidence that is available on record, which requires consideration of this Court.



10. This Court is of the considered view that the petitioners 2 to 5 have made out a prima facie case and they have also suffered incarceration from 22.06.2022 onwards and it will take some more time for this Court to take up the appeal for hearing. It was also brought to our notice that the fine amount imposed by the Court below has also been deposited.

11. In view of the above, this Court is inclined to suspend the sentence imposed on the petitioners 2 to 5 (Accused Nos.2, 4, 5 & 6) by the Court below in S.C.No.383 of 2014 dated 22.06.2022 subject to the following conditions:-

- (I) The petitioners 2 to 5 shall execute a bond for a sum of Rs.10,000/-, each with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned Sessions Judge, Mahalir Court, Madurai;
- (ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and the trial Court may obtain a copy of their Aadhar cards or Bank pass Books to ensure their identity; and
- (iii) The petitioners 2 to 5 shall appear before the respondent police every Monday at 10.30 a.m., for a period of 8 weeks. After completion of the period reporting before the respondent police, the petitioners shall report before the learned Sessions Judge, Mahalir Court, Madurai, on the first working day of every month at 10.30 a.m. until the disposal of the appeal and if they are not able to appear before the trial Court on any day, they shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the trial Court on any other day in lieu of the date of their absence, as directed by the trial Court.

sd/-

18/10/2022

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19 /10/2022

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

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TO

1.THE SESSIONS JUDGE, MAHALIR COURT, MADURAI.



2.THE SUPERINTENDENT,
CENTRAL PRISON,
MADURAI.

3.THE DEPUTY SUPERINTENDENT OF POLICE,
USILAMPATTI SUB DIVISION,
USILAMPATTI TOWN POLICE STATION,
MADURAI DISTRICT.

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

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-11590[I] dated
18/10/2022)

ORDER
IN
Crl.M.P.(MD)No.9795 of 2022
in
Crl.A.(MD)No.514 of 2022
Date :18/10/2022

RK/GB(19/10/2022) 5P/6C