



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

Monday, the Third day of January Two Thousand and Twenty Two

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP(MD) No.11190 of 2021
in
CRL.A.(MD)No.345 of 2020

ILAYARAJA ... PETITIONER/APPELLANT/SINGLE ACCUSED
Vs

THE DEPUTY SUPERINTENDENT OF POLICE,
MANAMADURAI DIVISION,
MANAMATHURAI
POLICE STATION,
SIVAGANGAI DISTRICT.
(CRIME NO.07/2006)

... RESPONDENT/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 passed in Spl.SC No.40/2019 dated 14.10.2020 on the file of the Court of Sessions (Special Court for SC/ST(POA) Act), Srivilliputtur, Virudhunagar District.

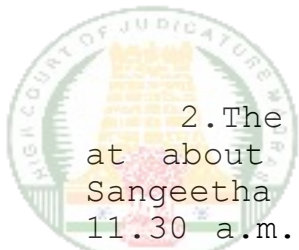
PRAYER IN CRL A(MD)No.345 OF 2020:

Pleased to call for the records in Spl.SC.No.40 of 2019 dated 14.10.2020 on the file of the Court of Sessions (Special Court for SC/ST(POA) Act), Srivilliputtur, Virudhunagar District, set aside the same, Acquit the appellant/Single Accused herein.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.A.MOHAMED HASHIM, Advocate for the petitioner and of MR.K.SANJAY GANDHI, Government Advocate (Crl.Side) on behalf of the Respondent, the court made the following order:-

Reserved On : 21.12.2021
Delivered on : 03.01.2022

This petition has been filed to suspend the sentence imposed by the Court of Sessions (Special Court for SC/ ST (POA) Act), Srivilliputhur, Virudhunagar District, made in Spl.S.C.No.40 of 2019, dated 14.10.2020 and to enlarge the petitioner on bail pending the disposal of the appeal.

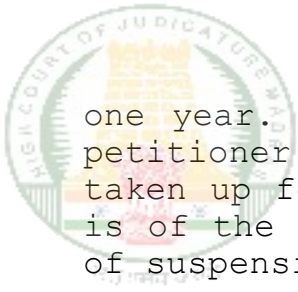


2.The allegation against the petitioner is that on 03.01.2006, at about 2.00 p.m, the petitioner raped the victim, by name, Sangeetha and the victim committed suicide on 04.01.2006 at about 11.30 a.m. A case in Crime No. 7 of 2006 under Sections 376, 306 r/w. 3(2)(v), 3 (1)(xii) of SC/ST Act and the same was taken on file as Special S.C.No.40 of 2019 by the Special Court for SC/ ST (POA) Act, Srivilliputhur, Virudhunagar District. After trial, the Special Court found the petitioner not guilty under Section 306 I.P.C. r/w. Section 3(2) (v) SC/ST Act and found the petitioner guilty under Section 376 I.P.C. and sentenced him to undergo 10 years rigorous imprisonment and to pay a fine of Rs.10,000/- (Rupees Ten Thousand only), in default, to undergo further period of three months simple imprisonment. Against the conviction and sentence the petitioner preferred an appeal in Crl.A.(MD)No.345 of 2020. Along with the Appeal the petitioner preferred this petition for suspension of sentence.

3.On the side of the petitioner, it is stated that there was a love affair between the victim and the petitioner and only on the information given by the victim, the petitioner visited the house of the victim. The brother of the victim was the friend of the petitioner. Even in the Dying Declaration, it is stated that she was only hugged and kissed by the petitioner. The case against the petitioner as per the dying declaration is not a rape. There is no medical evidence to prove that the victim was subjected to rape. The Serology report did not support the case of the prosecution. In Ex.P19, it was mentioned that there was no traces of rape. Instead of admitting the victim in the Government Hospital at Sivagangai, the victim was taken to Madurai Government Hospital. Though the victim was admitted in the Government Hospital, Madurai, there is delay in recording the F.I.R. The Doctor, who gave the endorsement in the dying declaration was not examined. The fitness of the victim to give a dying declaration was not proved by the prosecution. The reasons for acquittal under Section 306 I.P.C. is applicable for acquittal under Section 376 I.P.C. also. The petitioner is an practising advocate and he is in custody for the past one year and there are much more points for consideration in the appeal and prayed the sentence to be suspended.

4.On the side of the respondent, it is stated that it was the petitioner, who trespassed into the house and locked the door and committed rape on the victim. In a depressed mood, the victim committed suicide and she died on the same day. The prosecution has examined 18 witnesses and marked 20 documents and 2 Material Objects and proved the case beyond all reasonable doubts. In the dying declaration, the victim has stated that the petitioner is the reason for commission of her suicide and prayed the petition to be dismissed.

5. It is seen that the judgment of the trial Court was pronounced on 10.10.2020. The petitioner is in custody for the past



one year. It is seen that there are some arguable points for the petitioner in the appeal and the Criminal Appeal is not likely to be taken up for final hearing in the near future and hence, this Court is of the view that the petitioner herein is entitled to the relief of suspension of sentence.

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6. Accordingly, the substantive sentence of imprisonment alone is suspended till the disposal of the appeal and the petitioner is ordered to be released on bail on the following conditions:

(i) the petitioner is directed to execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the Sessions (Special Court for SC/ ST (POA) Act), Srivilliputhur, Virudhunagar District ;

(iii) the sureties shall affix their photographs and Left Thumb Impression in the surety bond and the learned Trial Judge may obtain a copy of any valid identity proof to ensure their identity ;

(iv) the petitioner shall appear **before the respondent police daily at 10.30 a.m.**, until the disposal of the appeal.

sd/-

03/01/2022

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

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NOTE: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

TO

1 THE SPECIAL JUDGE,
SESSIONS (SPECIAL COURT FOR SC/ST (POA) ACT)
SRIVILLIPUTTUR, VIRUDHUNAGAR DISTRICT.

2 THE DEPUTY SUPERINTENDENT OF POLICE,
MANAMADURAI DIVISION,
MANAMATHURAI POLICE STATION,
SIVAKANGAI DISTRICT.



3 THE SUPERINTEDENT,
CENTRAL PRISON,
MADURAI.

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

ORDER
IN
CRL MP(MD) No.11190 of 2021
in
CRL A(MD)No.345 OF 2020
Date :03/01/2022

PKP/PN/SAR-3/04.01.2022/4P/5C