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**Crl.M.P.No.3078 of 2023
in Crl.A. No.77 of 2022**

**M.SUNDAR,J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,**

(Order of the Court was made by M.SUNDAR, J.)

Captioned 'Criminal Miscellaneous Petition' (hereinafter 'Crl.M.P.' for the sake of brevity and convenience) has been filed under Section 389(1) of 'The Code of Criminal Procedure, 1973 (2 of 1974)' [hereinafter 'Cr.P.C.' for the sake of brevity and clarity] with a prayer for suspension of sentence qua judgment dated 13.12.2021 in S.C.No.279 of 2017 on the file of the Sessions Judge, Mahalir Neethimandram (Mahila Court), Salem. To be noted, this Court shall hereinafter be referred as 'Trial Court' for the sake of convenience and clarity.

2. The petitioner in captioned Crl.M.P. is A1 (first accused) in Trial Court.

3. The case of the prosecution which has been believed by the Trial Court is that one Ashok Kumar (P.W.1) borrowed from A1 (petitioner before us) a sum of Rs.1,50,000/- in the year 2011 for his younger sister's marriage by depositing title deeds relating to his properties. The properties as described by the prosecution is



1092 sq.ft. of land situate near bus stand and 69 cents land situate at Mel Alagapuram both in Yercaud in Salem District. At the time of borrowing the amount, A1 obtained blank promissory notes with P.W.1's signature alone. P.W.1 repaid the loan in three instalments, post repayment, A1 returned two original sale deeds and patta alone but did not return blank promissory notes said to have been obtained from P.W.1. It is the further case of the prosecution that A1 introduced himself as advocate and said that he is presently working as Reader in Sub Court, Sankari in Salem District. It is also the case of the prosecution that P.W.1 got back his documents from A1 through one Rex Stalin (P.W.6). It is the further case of the prosecution that when P.W.1 requested A1 to return the blank promissory notes obtained from him at the time of borrowing, A1 stated that the promissory notes have been given to his younger sister at Chennai and assured that he will get them back but did not do so. Later, by using the said documents obtained from P.W.1, A1 filed original suit in O.S.No.70 of 2017 against P.W.1 in Sub Court, Sankari is the further case of the prosecution. Be that as it may, the alleged occurrence which is the nucleus or in other words the fulcrum of the sessions case was on 11.03.2016 at about 9.30 p.m., A1 who is said to have gone over to P.W.1's new house where construction work was going on. It is the case of the prosecution that A2 to A5 accompanied A1 on the



date of occurrence. They forcibly took P.W.1 and P.W.1's mother (P.W.2) in a white colour car, obtained signatures in blank papers from them and then dropped them off in a nearby place i.e., Hasthampatty on the next day i.e., 12.03.2016 in the morning. In the interregnum, in this forcible exercise, P.Ws.1 and 2 suffered injuries and after they were let off next day, they went over to the Government hospital and took treatment.

4. P.W.1 then went over to the jurisdictional police station and lodged a complaint which has legally manifested itself as aforementioned Sessions Case No.279 of 2017.

5. The legal drill on hand is one qua suspension of sentence under Section 389(1) Cr.P.C. and therefore capturing short facts shorn of elaboration qua case of the prosecution which was believed by the Trial Court will suffice. We now move on to the proceedings before the Trial Court. The details pertaining to the charges and the conviction qua A1 in the Trial Court are as follows:

Sl. No.	Provision of law under which conviction was made	Sentence
1.	120 B IPC	Life imprisonment and a fine of Rs.1,000/- with default provision to undergo additional rigorous imprisonment of one year, if fine is not paid.
2	147 IPC	Two years rigorous imprisonment
3	452 IPC	Seven years rigorous imprisonment



Sl. No.	Provision of law under which conviction was made	Sentence
		and a fine of Rs.500/- with default provision to undergo additional rigorous imprisonment of one year if fine is not paid
4	364-A IPC	Life imprisonment and a fine of Rs.1,000/- with default provision to undergo additional rigorous imprisonment of one year, if fine is not paid.
5	384 IPC	Three years rigorous imprisonment
6	323 IPC (2 counts)	One year rigorous imprisonment for each count
7	342 IPC	One year rigorous imprisonment
8	506(ii) IPC	Seven years rigorous imprisonment

The above sentences are to run concurrently and there is set off qua period of incarceration pre-trial and pending trial.

6. Mr.R.Sankarasubbu, learned counsel appearing for the petitioner submitted emphatically that there is every likelihood of acquittal qua A1 in the main case as Section 364-A IPC has been wrongly invoked and Section 120B IPC has been treated as stand alone offence. To be noted, there is life imprisonment for both these charges.

7. As regards Section 364-A IPC which is captioned 'Kidnapping for ransom etc.,', the same was kicked in on 22.05.1993 by way of insertion qua IPC and it reads as follows:

**'346-A Kidnapping for ransom etc. -**

Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or (any foreign State or international inter-governmental organisation or any other person) to do or abstain from doing any act or to pay a ransom, shall be punishable with death, or imprisonment for life and shall also be liable to fine.'

8. Section 120B IPC is criminal conspiracy and we do not propose to extract and reproduce a provision as it is. It was submitted that the entire occurrence was to take thumb impression and signatures in blank papers but the same have been recovered and marked as Ex.P2 series and Ex.P3 series before the Trial Court. It was also pointed out that P.W.1 has deposed that a suit in O.S.No.70 of 2017 has been filed using the documents obtained by force on 11.03.2016. We do not propose to re-appreciate the evidence but we only propose to extract the relevant portion from the judgment qua conviction and sentence of the learned Trial Judge. This aspect of the matter is captured in paragraph 28 and

the same reads as follows:



'28....PW1 has further contended that later by using the said documents obtained from him, A1 filed the original suit in O.S.70/2017 against him at the sub court, Sankari and the same is pending. PW1 has contended that A1 is also working only in the said court.'

9. It was pointed out that the plaint in O.S.No.70 of 2017 has not been marked as exhibit. It was also pointed out that the blank papers in which signatures are said to have been obtained on 11.03.2016 have been recovered and marked as Ex.P2 series and Ex.P3 series. Therefore, there is absolutely no motive. It was also argued that besides motive, the ingredients of Section 364-A IPC are not made out and even a plain reading of the language in which Section 364-A IPC is couched will make it clear that the charge is clearly an error. The argument is that error in the charge would attract consequences set out in Section 464 Cr.P.C.

10. Learned Prosecutor adverting to the counter affidavit submitted that the evidence of P.W.1 and P.W.1's mother (P.W.2) is fairly strong and the conviction is likely to be sustained when the main appeal is taken up. To be noted, counter affidavit was filed by the Prosecutor owing to first proviso to Section 389(1) Cr.P.C. which kicked in on and from 23.06.2006 and this first



proviso to Section 389(1) Cr.P.C. says that when the offence is punishable with death, life or a term not less than 10 years, the Public Prosecutor should be given an opportunity to show cause in writing against the release.

11. As the plaint has not been marked as exhibit, we embarked upon the exercise of examining the case status from the District Judiciary official website. As a matter of abundant caution, we examined the case status of O.S.No.70 of 2017 both in the Sub Court, Sankari as well as District Munsif, Sankari. While O.S.No.70 of 2017 on the file of Sub Court, Sankari is filed by one Anusuya, O.S.No.70 of 2017 on the file of District Munsif, Sankari has been filed by one Senthilkumar. Further, in O.S. No.70 of 2017 on the file of Sub Court, Sankari, the defendant is one R.Ashok Kumar and therefore the reference appears to be to this suit. The District Court website shows that the defendant has been set exparte and the matter was listed for exparte evidence on 15.11.2017 itself. Thereafter, there have been multiple listings for exparte evidence and the suit itself has been ultimately disposed on 08.11.2022. It is seen that the judgment i.e., conviction/sentence of the Trial Court vide S.C. No.279 of 2017 was rendered on 13.12.2021 after P.W.1 was set exparte in the civil suit. We make it clear that we embarked upon this exercise only as a matter of abundant caution to make sure that nothing is missing the eye. Therefore, this shall



not be construed as relying on extraneous material for deciding the case on hand i.e., case which is a legal drill for suspension of sentence under Section 389(1) of Cr.P.C.

12. Reverting to the conviction and sentence of the Trial Court, we find that there is a missing link as regards motive, as rightly pointed out by the learned counsel for petitioner. The reason is, the papers in which the thumb impression and signatures are said to have been obtained qua occurrence have been recovered and have been marked as Ex.P2 series and Ex.P3 series in the Trial Court. Therefore, those papers could not have been the basis for the civil suit said to have been filed on the basis of promissory notes which were allegedly not returned. That is an entirely different cause of action and that cannot become a motive qua offence/charges which have resulted in conviction and sentence. Further more, the argument predicated on Section 364-A IPC comes across as a strong argument as it is not a case where (even according to the prosecution) the accused who is alleged to have kidnapped, abducted and compelled the person to do the act is relatable to the motive i.e., O.S. No.70 of 2017. To be noted this is a test on a demurrer. Assuming section 364-A IPC is attracted and assuming that the accused had compelled P.W.1 to sign and affix thumb impression in blank papers and if it is tested by saying



that Section 364-A IPC is attracted, those papers were recovered and marked as Ex.P2 series and Ex.P3 series and therefore those papers obviously could not have been the basis of O.S.No.70 of 2017. At the risk of repetition, we deem it appropriate to say that plaint has not been marked as exhibit in the Trial Court.

13. This takes us to the 120B IPC sentence. As is evident from the conviction and sentence of the Trial Court, 120B IPC has been treated as a stand alone offence and therefore we find substantial force in the argument of learned counsel for petitioner that the appeal cannot but gravitate towards acquittal.

14. If the two charges are erroneous, the consequence ingrained in Section 464 Cr.P.C. would be attracted and therefore the two life sentences become susceptible when the appeal under Section 374(2) Cr.P.C. legal drill is tested.

15. In the aforesaid backdrop, we remind ourselves about the recent judgment of Honourable Supreme Court in **Omprakash Sahni vs Jai Shankar Chaudhary And Anr.** rendered on 02.05.2023 and reported in *2023 SCC Online SC 551*. In *Omprakash's case*, the Honourable Supreme Court held that the endeavour on the part of the Court as far as embarking upon Section 389(1) Cr.P.C. legal drill is concerned should be to see



whether the case presented by the prosecution and accepted by the Trial Court can be said to be a case in which ultimately convict stands fair chance of appeal. Elaborating on this test, Honourable Supreme Court has held that if the answer to this question is in the affirmative, the accused should not be kept behind bars for a pretty long time till the conclusion of the appeal and suspension of sentence should follow as a corollary. The rider put in by Honourable Supreme Court as regards this test is that while undertaking this exercise there shall be no re-appreciation of evidence. It has also been held that prima facie case of the appeal gravitating towards acquittal should be palpable. In the case on hand, we find it tangible for the reasons alluded to and delineated supra in the course of our discussion and dispositive reasoning. The sequitur of the discussion and dispositive reasoning is, the prayer for suspension of sentence deserves to be acceded to.

16. We deem it appropriate to record for the purpose of completion of facts that A3 in the Trial Court moved for suspension of sentence and suspension of sentence was granted by another Division Bench in and by an order dated 28.02.2022 in CrI.M.P. No.363 of 2022 in CrI. A. No.31 of 2022 albeit on medical grounds. However, we are informed that nothing untoward has happened and 28.02.2022 order which was to operate till 10.06.2022 has already been further extended and A3 remains enlarged or in other



words A3 is not in incarceration and the suspension of sentence qua A3 continues to operate.

17. Owing to the facts and circumstances of the case and the points projected by the learned Prosecutor, while acceding to the suspension of sentence prayer, we deem it appropriate to impose certain conditions with a rider that it is obviously open to the petitioner to seek relaxation of the conditions after compliance qua the same for a length of time that would be acceptable for the Court before which relaxation is moved.

18. In the light of the discussion and dispositive reasoning thus far the following order is made:

18.1 The sentence qua petitioner (A1) vide judgment dated 13.12.2021 in S.C. No.279 of 2017 on the file of Sessions Judge, Magalir Neethimandram (Mahila Court), Salem (Trial Court) is suspended pending main appeal (Crl.A. No.77 of 2022) albeit subject to conditions adumbrated infra in the sub-paragraphs to follow;

18.2 The petitioner shall deposit the fine amounts before the Trial Court if not already deposited;

18.3 The petitioner shall execute a bond for a sum of Rs.25,000/- (Rupees Twenty Five Thousand only) with two sureties one of whom should be a blood relative (each for a likesum) to the satisfaction of



Sessions Judge, Magalir Neethimandram (Mahila Court), Salem (Trial Court);

18.4 The petitioner shall remain/reside within the Revenue District of Kancheepuram, furnish the temporary address to the Additional District Judge, Kancheepuram and shall not leave the Revenue District of Kancheepuram without prior permission from the Additional District Judge, Kancheepuram;

18.5 The petitioner shall report before the Additional District Judge, Kancheepuram every Monday at 10.30 a.m. until further orders;

18.6 If the petitioner moves a petition under Section 317 Cr.P.C. for any reason, it will be open to the learned Additional District Judge, Kancheepuram to consider the same on its own merits and in accordance with law untrammelled by this order.

19. Captioned Crl.M.P. is disposed of in the aforesaid manner with the aforesaid directives.

(M.S.J.) (K.G.T.J.)
08.06.2023

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P.S: Registry to forthwith communicate this order to Jail authorities in Central Prison, Salem.



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**M.SUNDAR,J.,
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K.GOVINDARAJAN THILAKAVADI, J.,**

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