



Crl.M.P.No.4489 of 2023
in Crl.A.No.345 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2023

CORAM :

THE HONOURABLE MR. JUSTICE **S.S. SUNDAR**
AND
THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

Crl.M.P.No.4489 of 2023
in
Crl.A.No.345 of 2023

1.Sathyamurthy
2.Rengu
3.Sarada

... Petitioners

Vs.

State rep. By

1.The Assistant Commissioner of Police,
Saidapet Range, Chennai.

2.The Inspector of Police,
R-6 Kumaran Nagar Police Station,
Chennai.

3.Gowri
4.J.Sheela

... Respondents

(R3 impleaded vide order dated 03.04.2023
in Crl.M.P.No.4827 of 2023 in Crl.A. No.345 of 2023;
R4 impleaded vider order dated 31.08.2023 in
Crl.M.P.No.9663 of 2023 in Crl.A.No.345 of 2023)

Criminal Miscellaneous Petition filed under Section 389(1) Cr.P.C.
to suspend the sentence imposed in Spl. S.C. No.02 of 2019 dated

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17.03.2023 by the learned Principal Sessions Judge, Chennai and
enlarge the petitioners on bail.

For Petitioners : Mr.R.C.Paul Kanagaraj

For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor
for R1 and R2
Mr.R.Muthukrishnan for R3 and R4

ORDER

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

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by the Principal Sessions Judge, Chennai in S.C. No.2 of 2019 dated 17.03.2023, and enlarge the petitioners on bail pending disposal of the above Criminal Appeal.

2. The learned Principal Sessions Judge, Chennai in S.C. No.2 of 2019, has convicted and sentenced the petitioners/A1 to A3 as follows:

<i>Accused No.</i>	<i>Offence for which Convicted</i>	<i>Sentence</i>
A1	376 IPC	Ten years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo three months imprisonment.



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Accused No.	Offence for which Convicted	Sentence
	417 IPC	One year imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo one month imprisonment.
	306 IPC	Five years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo two months imprisonment.
	3(2)(v) of SC/ST (PoA) Act	Life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo two months imprisonment.
A2	306 IPC	Five years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo two months imprisonment.
	3(2)(v) of SC/ST (PoA) Act	Life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo two months imprisonment.
A3	306 IPC	Five years rigorous imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo two months imprisonment.
	3(2)(v) of SC/ST (PoA) Act	Life imprisonment and to pay a fine of Rs.5,000/-, in default to undergo two months imprisonment.
Sentences are ordered to run concurrently		



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3. Challenging the above conviction and sentence, the petitioners, who are arrayed as A1, A2 and A3, have filed the above Criminal Appeal and they are seeking suspension of sentence and bail in the present miscellaneous petition.

4. The case of the prosecution is that the victim/P.W.2 while undergoing coaching class at All India Civil Services Exams Training Centre at Raja Annamalaipuram, Chennai, had acquaintance with the first accused; that the first accused moved freely with her as a friend and thereafter he proposed his love to her; that the first accused also gave assurance to marry her though he knew that the victim/P.W.2 belongs to Adi Dravidar community; that believing the assurance given by the first accused, the victim/P.W.2 accepted his love proposal and thereafter consented to have physical relationship at different places; that the first accused obtained signature of the victim/P.W.2 in all the marriage forms for performing the marriage at Vallimalai Temple, Vellore; that the first accused also informed her that their marriage would be performed on 19.01.2018; that under the pretext of marriage, he had intercourse with her in several places; that the first accused refused to marry the victim/P.W.2 at one point of time on the



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ground that she belongs to Adi Dravidar community; that he arranged his marriage with his own aunt's daughter on 21.01.2018; that when the victim/P.W.2 visited the house of the first accused, A1 to A3 abused her in filthy language using her caste name and thereby cheated the victim/P.W.2 and that victim/P.W.2 made an attempt to commit suicide as the first accused refused to marry her for the reason that she belongs to Adi Dravidar community; that a case was registered against the accused for the offences under Section 306 r/w 116 and 416 of IPC, subsequently altered into one under Sections 306 IPC r/w 417 IPC and again altered into one under Sections 376, 306 r/w 117 and 417 of IPC and Section 3(2)(v) of SC/ST Act; that final report has been filed against the accused under Sections 376, 417, 306 r/w 117 r/w 34 IPC r/w Section 3(2)(v) of SC/ST (PoA) Act before the Principal Sessions Court, Chennai and the case was later taken on file vide S.C.No.2 of 2019; that after examining 27 witnesses and marking 40 exhibits apart from five material objects, the Trial Court convicted all the accused.

5. The first accused/first petitioner was convicted for the offences under Sections 376, 417 and 306 IPC and Section 3(2)(v) of



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SC/ST (PoA) Act. The second and third accused viz., father and mother of the first accused were also convicted for the offence under Section 306 IPC and Section 3(2)(v) of SC/ST (PoA) Act.

6. The learned counsel for the petitioners submitted that the evidence discloses that there was a love affair between the first accused and the victim and at best it would only amount to a breach of promise and not amount to false promise. He relied upon the judgment of the Hon'ble Supreme Court in **Uday Vs. State of Karnataka** reported in **(2003) 4 SCC 46** wherein a similar case was considered by the Hon'ble Supreme Court. Relevant paragraphs of the said judgment are extracted below:

'21. It therefore appears that the consensus of judicial opinion is in favour of the view that the consent given by the prosecutrix to sexual intercourse with a person with whom she is deeply in love on a promise that he would marry her on a later date, cannot be said to be given under a misconception of fact. A false promise is not a fact within the meaning of the Code. We are inclined to agree with this view, but we must add that there is no strait jacket formula for determining whether consent given by the prosecutrix to sexual intercourse is voluntary, or whether it is given under a misconception of fact. In the ultimate analysis, the tests laid down by the Courts provide at best guidance to the judicial mind while considering a question of consent, but the Court must, in each case, consider the evidence before it and the surrounding circumstances, before reaching a conclusion, because each case has its own



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peculiar facts which may have a bearing on the question whether the consent was voluntary, or was given under a misconception of fact. It must also weigh the evidence keeping in view the fact that the burden is on the prosecution to prove each and every ingredient of the offence, absence of consent being one of them.

22. The approach to the subject of consent as indicated by the Punjab High Court in *Rao Har Narain Singh (supra)* and by the Kerala High Court in *Vijayan Pillai (supra)* has found approval by this Court in *State of H.P. vs. Mango Ram (2000) 7 SCC 224*. Balakrishnan, J. speaking for the Court observed :-

"The evidence as a whole indicates that there was resistance by the prosecutrix and there was no voluntary participation by her for the sexual act. Submission of the body under the fear of terror cannot be construed as a consented sexual act. Consent for the purpose of Section 375 requires voluntary participation not only after the exercise of intelligence based on the knowledge of the significance and moral quality of the act but after having fully exercised the choice between resistance and assent. Whether there was consent or not, is to be ascertained only on a careful study of all relevant circumstances."

23. Keeping in view the approach that the Court must adopt in such cases, we shall now proceed to consider the evidence on record. In the instant case, the prosecutrix was a grown up girl studying in a college. She was deeply in love with the appellant. She was however aware of the fact that since they belonged to different castes, marriage was not possible. In any event the proposal for their marriage was bound to be seriously opposed by their family members. She admits having told so to the appellant when he proposed to her the first time. She had sufficient intelligence to understand the significance and moral quality of the act she was consenting to. That is why she kept it a secret as long as she could. Despite this, she did not resist the overtures of the appellant, and in fact succumbed to it. She thus freely exercised a choice between resistance and



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assent. She must have known the consequences of the act, particularly when she was conscious of the fact that their marriage may not take place at all on account of caste considerations. All these circumstances lead us to the conclusion that she freely, voluntarily, and consciously consented to having sexual intercourse with the appellant, and her consent was not in consequence of any misconception of fact.

24. There is another difficulty in the way of the prosecution. There is no evidence to prove conclusively that the appellant never intended to marry her. Perhaps he wanted to, but was not able to gather enough courage to disclose his intention to his family members for fear of strong opposition from them. Even the prosecutrix stated that she had full faith in him. It appears that the matter got complicated on account of the prosecutrix becoming pregnant. Therefore, on account of the resultant pressure of the prosecutrix and her brother the appellant distanced himself from her.'

7. Learned counsel for the victim/P.W.2 is heard. Learned counsel relied on a portion of the evidence and document to support his argument that the first accused misled the victim/P.W.2 by false documents. He also submitted that the conduct of the first accused as assessed by the learned Sessions Judge cannot be ignored.

8. The facts in this case are not seriously in dispute. The first accused was unmarried when he developed an affair with the victim/P.W.2. The evidence discloses that the first accused and the victim were indulged in having sexual relationship on a number of



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occasions at different places. The victim is an educated lady and it is admitted that she is an aspiring candidate for completing IAS and was undergoing a course in a reputed institute. Therefore, it is expected that the victim/P.W.2 is aware of the consequence of her act. In the evidence, it is also stated that the first accused had made arrangements for performance of marriage with the victim/P.W.2.

9. In this case, it is not established that the consent by the victim/P.W.2 was under a misconception of fact; and that A1 obtained consent knowing that consent was given in consequence of such misconception. When an attempt was made by the first accused for performing his marriage with the victim/P.W.2 this Court finds force in the submission made by the learned counsel for the petitioners that the first petitioner cannot be found guilty of the offence under Section 376 IPC. It is to be noted, in the judgment of Hon'ble Supreme Court in **Deepak Gulati Vs. State of Haryana** reported in **(2013) 7 SCC 675**, the Hon'ble Supreme Court has laid down certain principles as to when the offence of Section 376 IPC would be made out in a case of this nature. Applying the said principles this Court finds that in the instant case the victim/P.W.2 was aware of the consequence of her act.



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Further, we also find no evidence to substantiate the prosecution case as regards the other offences including the offence under the SC/ST (PoA) Act.

10. For the aforesaid reasons, this Court is fully convinced that the sentence of imprisonment imposed on the petitioners/appellants deserves to be suspended in the interest of justice.

11. Accordingly, this Criminal Miscellaneous Petition stands **allowed** and the sentence of imprisonment imposed on the petitioners is **suspended** and they are granted bail on the following conditions:

(i) Each of the petitioner shall execute a bond for a sum of Rs.25,000/-, each with two sureties, of whom, one should be a blood relative, each for a like sum to the satisfaction of the learned XXIII Metropolitan Magistrate, Saidapet, Chennai.

(ii) The sureties shall affix their photographs and Left Thumb Impression in the surety bond and



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the trial Court may obtain a copy of their Aadhar card or Bank pass Book and mobile numbers to ensure their identity; and

(iii)The petitioners shall appear before the trial Court 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.

(S.S.S.R., J.) (S.M., J.)
31.10.2023

Index : Yes / No
Neutral Citation: Yes/No
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To

- 1.The Principal Sessions Judge,
Chennai.
- 2.The XXIII Metropolitan Magistrate,
Saidapet, Chennai.



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S.S. SUNDAR, J.
and
SUNDER MOHAN, J.

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- 3.The Assistant Commissioner of Police,
Saidapet Range, Chennai.
- 4.The Inspector of Police,
R-6 Kumaran Nagar Police Station,
Chennai.
- 5.The Superintendent,
Central Prison, Puzhal, Chennai.
- 6.The Superintendent,
Special Prison for Women, Puzhal, Chennai.
- 7.The Public Prosecutor,
High Court, Madras.

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