



Crl.M.P.No.16677 of 2023 in Crl.A.No.1141 of 2023

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M.NIRMAL KUMAR, J.

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed by judgment, dated 29.08.2023 in S.C.No.88 of 2019 by the learned Sessions Judge, Special Court for Exclusive Trial of Cases registered under SC/ST (POA) Act, Villupuram (trial Court) and enlarge the petitioner on bail pending disposal of the main appeal.

2.The petitioner was convicted by the trial Court for offence under Section 471 of IPC and sentenced to undergo one year Simple Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default three months Simple Imprisonment. The petitioner is not found guilty for offence under Sections 376 IPC r/w 3(1)(r), 3(1)(s) & 3(2)(v) of SC/ST (POA) Amendment Act, 2015. Challenging the conviction and sentence of the trial Court, the petitioner preferred an appeal and the Suspension of Sentence. Further, the mother of the petitioner/A2 was acquitting from all charges levelled against her.



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3.The gist of the case is that on 27.06.2018, the victim girl (PW1) lodged the complaint (Ex.P1) to the respondent Police that she belongs to Scheduled Caste Adi Dravidar Community and she lodged Elavarasan/petitioner for six years who belongs to Vanniyar community, Most Backward Community. The petitioner on the promise of marrying the victim girl, had sexual relationship with her on several occasions. Later, the victim girl came to know that the petitioner and his mother were making arrangement for marriage of the petitioner with another girl within their community. When the victim girl questioned the same, they abused calling her by caste name and also threatened her, claiming nothing can be done to them, left with no other option, the victim girl lodged the complaint (Ex.P1) to the respondent Police and FIR (Ex.P10) in Crime NO.616 of 2018, for offence under Sections 294(b), 417, 376(2)(n) of IPC r/w 3(1)(r), 3(1)(s) of SC/ST (POA) Amendment Act, 2015 registered against the petitioner and his mother/A2. PW14, the Deputy Superintendent of Police took up investigation, examined the witnesses for the scene of occurrence, prepared Observation Mahazar (Ex.P2), Rough Sketch (Ex.P12) in presence of witnesses, collected community certificate of the victim girl and petitioner (Ex.P5), produced the victim



girl and the petitioner before the Doctors. The Doctor (PW9) examined the victim girl and issued medical report (Ex.P8) and the Doctor (PW10) examined the petitioner and issued medical report (Ex.P9). Thereafter, PW14 arrested the petitioner and remanded him to judicial custody on 29.06.2018 and on completion of investigation, filed charge sheet before the trial Court.

4.On the side of the prosecution, fourteen witnesses examined as PW1 to PW14 and fourteen documents marked as Exs.P1 to P14. On the side of the defence, no witness examined, but one document marked as Ex.D1. On completion of trial, the trial Court convicted and sentenced the petitioner as stated above.

5.The learned counsel for the petitioner submitted that the trial Court suspended the sentence of the petitioner to file an appeal before the higher Court. He further submits that the victim girl was projected as though she was sexually assaulted on the promise of marriage by the petitioner. The victim girl was unable to give details of the date, time, and place of sexual assault which proves that no such alleged occurrence took



place. The petitioner and the victim girl were friends known to each other from school days. In such circumstances, now citing caste and refusal to marry the victim girl and terming it as rape and also strapping offence under the provisions of SC/ST (POA) Act would not arise. The trial Court acquitted the petitioner of all charges except the offence under Section 417 IPC. The mother of the petitioner/A2 was acquitted from all charges levelled against her. Hence, prays for Suspension of Sentence and bail.

6.The learned Additional Public Prosecutor appearing for the respondent Police submitted that in this case, on the complaint of the victim girl, FIR registered against the petitioner and his mother/A5. Thereafter, the respondent Police visited the scene of occurrence, prepared Observation Mahazar (Ex.2), Rough Sketch (Ex.P12), examined the witnesses present in the scene, who were aware about the relationship between the victim girl and the petitioner. The Doctors (PW9 & PW10) confirmed that the victim girl hymen was found not intact confirming that there was sexual assault. The trial Court terming it as consensus act is not proper. The Hon'ble Apex Court time and again held that in a case of promise to marry and having sexual relationship, consent would not apply



in view of Section 90 of IPC which has been lose sight by the trial Court.

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7.In support of his submissions, the learned Additional Public Prosecutor relied on the following decisions:

(i)“**Anurag Soni Versus State of Chattisgarh** reported in **(2019) 13 SCC**”, the relevant portion (paragraph 17) is as follows:

“17.Therefore, considering the aforesaid facts and circumstances of the case and considering the law laid down by this Court in the aforesaid decisions, we are of the opinion that both the courts below have rightly held that the consent given by the prosecutrix was on misconception of fact and, therefore, the same cannot be said to be a consent so as to excuse the accused for the charge of rape as defined under Section 375 IPC. Both the courts below have rightly convicted the accused for the offence under Section 376 IPC.”

(ii)“**Pramod Suryabhan Pawar Versus State of Maharashtra and other** reported in **(2019) 9 SCC 608**”, the relevant portion (paragraph 18) is as follows:

“18.To summarise the legal position that emerges from the above cases, the “consent” of a woman with



respect to Section 375 must involve an active and reasoned deliberation towards the proposed act. To establish whether the “consent” was vitiated by a “misconception of fact” arising out of a promise to marry, two propositions must be established. The promise of marriage must have been a false promise, given in bad faith and with no intention of being adhered to at the time it was given. The false promise itself must be of immediate relevance, or bear a direct nexus to the woman's decision to engage in the sexual act.”

Thus, the petitioner had sexual relationship with the victim girl on the promise of marrying her, thereafter, on coming to know that she belongs to Scheduled Caste community, he refused to marry her. For this reason, a case has been registered under SC/ST (POA) Act and Section 376 IPC. He further submitted that the Superintendent of Police, Villupuram written to the District Collector, Villupuram in Na.Ka.No.K3/27646/2023, dated 03.11.2023 apprising the District Collector the factual position of the case and in justice caused to the victim girl and recommended for appeal to be filed, for the charges wherein the petitioner had been acquitted. The District Collector, Villupuram in Na.Ka.C1/1525726-72122/2023, dated 27.11.2023 had addressed the Home Secretary (Courts-I), Secretariat



recommending for appeal to be filed. The trial Court Public Prosecutor gave opinion to file an appeal. Further submitted that in this case, notice served to the victim girl who received the same and informed the steps taken by the State to file an appeal. The victim girl informed for the present she is yet to file appeal due to financial constraints.

8.Now notice served to the victim girl and there is no representation by her either in person or by any counsel.

9.In view of the above, finding that the petitioner had been convicted for a period of one year, and the trial Court had already suspended the sentence, this Court is inclined to grant suspension of sentence till the disposal of the main appeal.

10.Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the trial Court.



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11.Further, the petitioner shall appear before the Trial Court on the first working day of every English Calender month at 10.30 a.m., till the disposal of the appeal and if he is not able to appear before the Trial Court on that day, he shall make arrangement 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 his absence as directed by the trial Court.

12.Accordingly, this Criminal Miscellaneous petition is ordered.

30.11.2023
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