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*Crl.M.P.No.17064 of 2023
in Crl.R.C.No.1803 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.10.2023

CORAM:

THE HON'BLE MR.JUSTICE **M. NIRMAL KUMAR**

Crl.M.P.No.17064 of 2023
in
Crl.R.C.No.1803 of 2023

Rajivgandhi

... Petitioner/Accused

Vs.

State
Rep by Inspector of Police,
All Women Police Station,
Tindivanam, Villupuram District.
Crime No.13 of 2017

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C to suspend the sentence imposed on the petitioner by judgment dated 08.08.2023 in C.C.No.176 of 2018 on the file of the learned Judicial Magistrate Court No.I at Tindivanam and confirmed by the learned I Additional District and Sessions Court, Tindivanam by judgment dated 16.10.2023 passed in Crl.A.No.83 of 2018 and to enlarge the petitioner on bail pending disposal of the main Criminal Revision Petition.



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For Petitioner : Mr.T.Saikrishnan

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Judicial Magistrate No.I, Tindivanam by judgment dated 08.08.2023 made in C.C.No.176 of 2018 and confirmed by the learned I Additional District and Sessions Judge, Tindivanam by judgment dated 16.10.2023 passed in Crl.A.No.83 of 2018 and enlarge the petitioner on bail pending disposal of the above appeal.

2. The petitioner/A1 in C.C.No.176 of 2018 was convicted by the Trial Court by judgment dated 08.08.2023 for the offences under Sections 498-A of IPC and sentenced to undergo one year simple imprisonment and to pay a fine of Rs.5,000/-, in default to undergo three months simple imprisonment. Aggrieved against the judgment, the petitioner preferred an appeal before the I Additional District and Sessions Judge, Tindivanam in



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C.A.No.83 of 2023. The learned Sessions Judge by judgment dated 16.10.2023, dismissed the appeal confirming the conviction and sentence passed by the Trial Court, against which, the petitioner/A1 has filed Crl.R.C.No.1803 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.

3. Before the trial Court, the petitioner, his mother and one Kalaiarasi have been shown as accused. Initially charges have been framed against them for offences under Sections 498(A), 352, 494 and 506(i) of IPC. Later A2 and A3 in this case were acquitted. The petitioner was acquitted for offences under Sections 352, 494 and 506(i) of IPC and was convicted for offence under Section 498-A of IPC alone.

4. Before the trial Court, on the side of the prosecution P.W.1 to P.W.10 examined and marked 6 documents as Ex.P1 to Ex.P6. On the side of the defence, no witnesses examined and no documents marked. The Trial Court on the evidence and materials produced, convicted the petitioner as stated above.



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5. The contention of the petitioner is that the case projected by the prosecution is, PW1/de-facto complainant while watching the mobile phone of the petitioner, saw the photograph of the petitioner along with second and third accused with a small child, who were celebrating birthday party of the child. When she enquired about the same to the petitioner, he replied that it is his son, which he got through the second marriage. When the same was questioned by the de-facto complainant, she was abused and threatened. Further she was also physically assaulted by the petitioner and his mother. Thereafter, on 02.08.2017, the petitioner is said to have been brought the third accused to his house and she also joined along with petitioner and A2 and assaulted the de-facto complainant. The Trial Court in its judgment at para 31 gave a finding that there was a contradictions in the complaint and the evidence of PW1. Further gave a finding that the charge of A1, A2 assaulting and threatening the de-facto complainant is also not proved. In such circumstances conviction of the petitioner is not proper. He further submitted that in para 34 of the Trial Court judgment the only reason given by the trial Court is the birth certificate/Ex.P6, which was produced by P.W.10/Investigating Officer, in which the petitioner's name has been given



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as father of the child, which has not been disputed by the petitioner. Further, this has been referred to in the Lower Appellate Court judgment in para 14, wherein, the Lower Appellate Court recorded that the appellant objected the marking of Ex.P6 through PW10/Investigating Officer. It was also observed that Ex.P6 has been obtained from the Commissioner of Tindivanam Municipality and for this purpose one Surendar Sha of Tindivanam Municipality has been examined and recorded his statement. But the said Surendar has not been examined as witness. In view of the same, Ex.P6 has got no relevance. Further, there was an objection from the petitioner. On the contrary, the Lower Appellate Court had given a reason that no single question has been posed to PW10 challenging Ex.P6 is not proper. Further, the petitioner has arguable points and fair chance of success in this revision. Hence, he prays for granting suspension of sentence to the petitioner.

6. Learned Additional Public Prosecutor opposes the bail petition by submitting that PW1/de-facto complainant lodged a complaint against the petitioner, his mother and one Kalaiarasi, who is the second wife of the petitioner. When the first marriage of the petitioner with de-facto



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complainant was in subsistence, the petitioner married the third accused/Kalaiarasi and through her they got a child. The de-facto complainant was constantly abused, assaulted which had been clearly spoken by PW1, PW2/father and PW3/mother of PW1. All the witnesses have supported the case of the prosecution. They have clearly stated about the harassment and cruelty subjected to PW1. The Trial Court had given a well reasoned judgment and wherever there was exaggeration, the same was considered and for that reason A2 and A3 acquitted from the case as well as the petitioner acquitted for the offence under Sections 352, 494 and 506(i) of IPC. The petitioner has not challenged Ex.P6/Birth Certificate, in which the petitioner was shown as father of the child. The Trial Court on this score convicted the petitioner for offence under Section 498(A) of IPC. Cruelty is both physical and verbal. Creating such document would cause cruelty to the de-facto complainant/PW1. The Lower Appellate Court considering the Trial Court judgment, rightly dismissed the appeal. Hence, learned Additional Public Prosecutor prays for dismissal of the petition.



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7. Considering the submissions made and on perusal of the material it is seen that the Trial Court found that the evidence of PW1 seems to be with exaggeration and there was contradictions between the evidence of PW1 to PW3. Further finding some portion of the evidence as unbelievable, acquitted A2 and A3 and acquitted the petitioner for offences under Sections 352, 494 and 506(i) of IPC. The Trial Court convicted the petitioner for offence under Section 498(A) of IPC primarily relying upon Ex.P6. It is seen from the Lower Appellate Court judgment that this Ex.P6 was marked through the Investigation Officer/PW10 and not through the author, hence objected by the petitioner. In view of the same, genuineness of Ex.P6 becomes doubtful and no reliance can be placed. Further taking note of the fact that there are arguable points involved in this revision and it would take some time for the revision to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioner.

8. Accordingly, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the revision and the petitioner is ordered to be enlarged on bail, on condition that he shall execute a bond



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for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate No.I, Tindivanam.

9. Further, the petitioner shall appear before the Trial Court on the first working day of every English Calendar month at 10.30 a.m. until the disposal of the revision and if he is not able to appear before the Trial Court on that day, he 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 his absence as directed by the Trial Court.

10. Accordingly, this Miscellaneous Petition is ordered.

20.10.2023
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Note: Issue order copy on 20.10.2023.



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To

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- 1.The Inspector of Police,
All Women Police Station,
Tindivanam, Villupuram District.
- 2.The Judicial Magistrate No.I,
Tindivanam.
- 3.The I Additional District and Sessions Judge,
Tindivanam.
- 4.The Superintendent,
Central Prison, Cuddalore.
- 5.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

rsi

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