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*Crl.M.P.No.17115 of 2023
in Crl.A.No.1202 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.11.2023

CORAM:

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

Crl.M.P.No.17115 of 2023
in
Crl.A.No.1202 of 2023

Prabhakaran

... Petitioner/A1

Vs.

State rep. by
The Inspector of Police,
Vellakovil Police Station,
Tiruppur District.

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 397 r/w 401 of Criminal Procedure Code to suspend the conviction and sentence imposed on the petitioner/appellant vide judgment dated 19.09.2023 in S.C.No.93 of 2019 by the learned Sessions Judge, Mahila Court (Fast Track Mahila Court), Tiruppur and enlarge the petitioner on bail pending disposal of the above criminal appeal.

For Petitioner : Mr.H.Fazil Mohamed
for Mr.S.Giritharan

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor



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ORDER

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This Criminal Miscellaneous Petition has been filed by the petitioner, seeking suspension of sentence of imprisonment imposed by the learned Sessions Judge, Mahila Court (Fast Track Mahila Court), Tiruppur by judgment dated 19.09.2023 made in S.C.No.93 of 2019 and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner was tried along with his father and mother in S.C.No.93 of 2019 for offence under Sections 498A and 304B of IPC. The Trial Court by judgment dated 19.09.2023, acquitted petitioner's father/A2 and mother/A3 but convicted the petitioner for offence under Section 306 of IPC and sentenced him to undergo three years rigorous imprisonment and he was acquitted for offence under Sections 498A and 304B of IPC. The conviction was suspended by the Trial Court. Aggrieved against the conviction, the petitioner/accused has filed Crl.A.No.1202 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.



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3.The case of the prosecution is that the petitioner and his deceased wife Jamuna @ Sivagami had a love marriage five years before and the marriage was held on 23.06.2012 in Palani Murugan Temple. Since the marriage was opposed by Jamuna's parents, the petitioner and his wife lived separately in Karur and later in Paramathi. Out of the marriage, they had one female child. The petitioner purchased two wheeler financed by HDFC Bank. After purchase of the two wheeler, he was unable to pay the monthly EMI. Finding difficulty to pay the monthly EMI, he forced his wife to get some money from her parents. The petitioner was jobless, further he forced his wife to withdraw the money, which was available in Canara Bank, Dharapuram Branch and he also assaulted his wife. PW1/mother of Jamuna after coming to know about her daughter being beaten with stick, gone to save her. At that time, petitioner's parents were present but they also not interfered to save her daughter from beating. PW1 pushed the petitioner down and thereafter wordy quarrel arose between them. PW4/Thangaraj intervened and separated them. On the same day, at about 10.30 a.m. PW1's daughter Jamuna asked her mother to withdraw the money from the Bank and to handover the same to the petitioner. Unable to bear further torture, on 08.04.2018, her daughter committed suicide by hanging using her Saree.



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Since the death occurred within seven years from the marriage, initially a case under Section 174 of Cr.P.C. registered. Later RDO enquiry conducted and finally charge sheet filed for offence under Sections 498A and 304B of IPC.

4.During trial, PW1 to PW14 examined, Exs.P1 to P18 marked. On the side of the defence, Ex.D1 marked through PW14/Investigating Officer. On conclusion of the trial, the Trial Court convicted the petitioner alone for offence under Section 306 of IPC and acquitted his parents.

5.The contention of the petitioner is that the admitted case is the petitioner and his wife Jamuna had a love marriage against the wishes of their parents and the marriage took place at Palani Murugan Temple. Thereafter, they were living in Karur and later in Paramathi. Since it is a love marriage, there is no question of any demand of dowry. The RDO in this case found no demand of dowry but the police filed charge sheet for offence under Section 304B of IPC. In this case, RDO was not examined. RDO report/Ex.P17 marked through PW14/Investigating Officer. He further submitted that his 10 years old daughter is being taken care by the petitioner,



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who is now attending school. His in-laws never taken care of the child. He further submitted that in this case, PW1 is the mother-in-law, PW2 is the sister-in-law, PW3 is the brother-in-law. These three persons have made false allegations as though the petitioner is the cause for his wife committing suicide. PW4, a relative of PW1 to PW3 was projected to show that on 08.04.2018 there was a quarrel and the petitioner beaten his wife and he pacified the fight. PW4 not supported the case of the prosecution. It is an admitted case that PW1 to PW3 not accepted the love marriage of petitioner with Jamuna and they never visited the petitioner's house till the death of his wife. The petitioner taking vengeance, since he married PW1's daughter against their wish. In this case, the Trial Court had given conviction, which is against the evidence available. The petitioner was on bail during investigation and trial. The Lower Court already suspended the sentence. Further submitted that the petitioner has arguable points and fair chance of success in this appeal. Hence, he prays for granting suspension of sentence to the petitioner.

6.The learned Additional Public Prosecutor strongly oppose this petition stating that PW1 is the mother of the deceased. PW2 and PW3 are



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sister and brother. The petitioner married PW1's daughter Jamuna against wishes of their family. It was a love marriage. After the marriage, he started making demand of dowry. The petitioner was jobless, some money was available in the Canara Bank, which the petitioner forced his wife to collect from her parents. The petitioner's wife having left her family members and had a love marriage, was reluctant to ask her family members for money. When she resisted the same, she was beaten by the petitioner. Unable to bear sufferings and beating, further petitioner though purchased Scooty under finance from HDFC Bank, he failed to pay the EMI, the vehicle was seized by the bank officials, which created great hardship to her. Finally on 08.04.2018, she was beaten by the petitioner, which led his wife to commit suicide. The suicide had taken place in the matrimonial home. The petitioner not given any proper reason for her death. In this case, PW9 is the Post-mortem Doctor, who confirmed that the death is due to hanging. PW7, PW8 and PW10 are the Doctors, who stated about the health condition and treatment given to the petitioner's wife. PW11 to PW14 are official witnesses/police persons, who took part in the investigation. He further submitted that in this case, the Trial Court had already suspended the sentence. But, 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 PW6 is the officer of HDFC Bank, who confirms that petitioner had purchased two wheeler on hire purchase and he was not properly paying the EMI, hence, the vehicle was seized in public by the financier, which triggered the victim to commit suicide. This explanation appears plausible. Further, the amount which was forced to be withdrawn and given to the petitioner is the compensation amount received by his in-laws due to the death of his father-in-law. The petitioner's wife is also a legal heir entitled for compensation. It is a love marriage and they were living separately from the date of marriage and there was no visitation by PW1 to PW3 during the matrimonial life between the petitioner and the deceased. Further, his 10 years old daughter is now under the care and custody of the petitioner and she is attending school. Further taking note of the fact that there are arguable points involved in this appeal and it would take some time for the appeal to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioner.



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8. 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 learned Sessions Judge, Mahila Court (Fast Track Mahila Court), Tiruppur.

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 appeal 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 Criminal Miscellaneous Petition is ordered.

24.11.2023

rsi



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To

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- 1.The Inspector of Police,
Vellakovil Police Station,
Tiruppur District.
- 2.The Sessions Judge,
Mahila Court (Fast Track Mahila Court),
Tiruppur.
- 3.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

rsi

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