



Crl.M.P.No.18062 of 2023 &
Crl.R.C.No.1934 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2023

CORAM:

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

Crl.M.P.No.18062 of 2023 &
Crl.R.C.No.1934 of 2023

Kalairaj

... Petitioner

Vs.

The State Rep. by
The Inspector of Police,
All Women Police Station,
Perambalur Police Station.
(Crime No.10/2014)

... Respondent

PRAYER: Criminal Revision filed under Section 397(1) of Cr.P.C. to suspend the sentence passed by the learned Principal District & Sessions Judge, Perambalur in C.A.No.03 of 2023 vide judgment dated 23.08.2023 confirming the judgment passed in C.C.No.3 of 2016 on the file of the learned Judicial Magistrate No.II, Perambalur IC Additional Mahila, Perambalur dated 21.12.2022 and enlarge the petitioner on bail, pending disposal of the above criminal revision.

For Petitioner : Mr.S.T.Raja

For Respondent : Mr.A.Damodaran



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Additional Public Prosecutor

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ORDER

The petitioner/accused in C.C.No.3 of 2016 was convicted by the trial court for the offence under section 498A IPC and sentenced to undergo two years S.I. and to pay a fine of Rs.1,000/- in default to undergo one month S.I. Aggrieved by the same, the petitioner preferred an appeal before the learned Principal District & Sessions Judge, Perambalur in Crl.A.No.3 of 2023. The learned Principal District & Sessions Judge, Perambalur had dismissed the appeal by confirming the conviction and sentence passed by the trial court, against which, the present revision and suspension of sentence.

2. The contention of the petitioner is that the petitioner along with his father, mother and his two sisters were charged and tried for the offences under sections 498A and 406 IPC. The trial court on conclusion of trial, acquitted all the accused except the petitioner from the offences and convicted the petitioner alone for the offence under section 498 IPC. The contention of the petitioner is that based on the evidence and materials, the



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trial court acquitted the petitioner and others from the case, on the same set of facts, convicting the petitioner under section 498 A is not proper. He submitted that the witnesses are the family members of his wife. The petitioner is employed in Singapore and the same is admitted by the defacto complainant. The petitioner prior to marriage and after the marriage is staying in Singapore and as and when, he used to come to native, the defacto complainant would join. In fact, the petitioner would like to take his wife to Singapore, but she was not interested in continuing to stay in Singapore. She wanted to live as a separate nucleus family and the petitioner had to come down to India to live separately with her, which was objected to by the petitioner. Thereafter, she gave a false complaint. Further, the petitioner was not even called for ear boring ceremony of his daughter and the petitioner's wife and her family members were independently acting on their own. The petitioner had filed a divorce petition on the ground of desertion and cruelty before the Family Court at Perambalur in HMOP.No.78 of 2022. In the divorce proceedings, the evidence and the conduct of the petitioner's wife had been clearly analysed and narrated. Further referring to the said judgment, he submitted that his wife had admitted that she had lodged a



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compliant earlier, she attempted to commit suicide and also with regard to the other instances. The family court finding that the cruelty is at the hands of the defacto complainant and hence granted divorce. Nowhere in the evidence reveals that there is a demand for dowry or harassment and cruelty. On the other hand, a clear finding of the family court judge is that the petitioner has been subjected to cruelty. He further submitted that the lower appellate court without considering the evidence and materials independently, had mechanically dismissed the appeal.

3. Learned Additional Public Prosecutor submits that on the complaint of PW1, the case has been registered. Initially, the complaint was not entertained, thereafter on the direction of the Magistrate, FIR has been registered and charge sheet filed in this case. Before the trial court, PW1 to PW7 examined and Ex.P1 to Ex.P9 marked. The trial court, on the evidence and witnesses, acquitted the petitioner's parents and sisters, but found that the petitioner had committed cruelty and convicted the petitioner. As regard, the family court judgment, it is a recent judgment rendered only in the month of October 2023 and this judgment was not available before the trial



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court as well as the lower appellate court and hence, the same cannot be considered now and opposed the petition.

4. Considering the submissions made on either side and the materials available on record, this Court finds force in the petitioner's submission and hence, inclined to grant suspension of sentence.

5. 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 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.II, Perambalur.

6.Accordingly, this Miscellaneous Petition is ordered.

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To

1.The Inspector of Police,
All Women Police Station,
Perambalur Police Station.

2.The Principal District & Sessions Judge, Perambalur

3.The Judicial Magistrate No.II, Perambalur

4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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