



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Monday, the Twenty Third day of January Two Thousand and Twenty Three

WEB COPY

PRESENT

The Hon`ble Mr.Justice G.ILANGO VAN

CRL MP(MD) No.572 of 2023
IN
CRL A(MD) No.49 of 2023

C.ALAGURAJ

... APPELLANT/ACCUSED

Vs

State Rep.by
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
VILATHIKULAM P.S.
(CRIME NO. 9 OF 2015)

... RESPONDENT/COMPLAINANT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspend the execution of sentence passed by the Fast Track Mahila Court, Thoothukudi dated 30.11.2022 made in S.C No. 39 of 2017 and to order to release the petitioner/ Appellant/ Accused on bail pending disposal of the appeal.

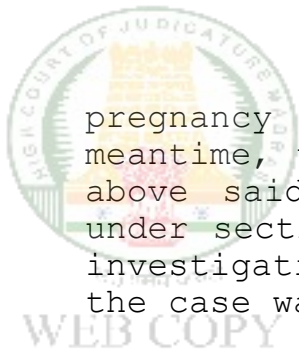
Prayer in CRL A(MD).49/2023 :

To call for the records relating to the judgment dated 30.11.2022 made in S.C.No.39 of 2017 on the file of Hon'ble Court of Fast Track Mahila Court, Thoothukudi the order of conviction and set aside the same as illegal and allow the above appeal.

Order : This petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.MOHAMED MOHIDEEN.T.S., Advocate for the petitioner and of MR.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, while admitting the CRL.A., the court made the following order:-

This Criminal Miscellaneous Petition is filed to suspend the sentence imposed against the petitioner in SC No.39 of 2017, dated 30/11/2022 by the Fast Track Mahila Court, Thoothukudi and enlarge the petitioner on bail pending disposal of the criminal appeal.

2.The case of the prosecution is that on the false promise of marriage, the accused had sexual relationship with the victim girl in the year 2015. Due to the said relationship, the victim girl got



pregnancy and she gave birth to a child on 11/01/2016. In the meantime, the accused married one another girl. On the basis of the above said occurrence, the case was registered for the offences under sections 417 and 376 IPC. After completing the formalities of investigation, final report was filed against this petitioner and the case was taken on file in SC No.39 of 2017 by the trial court.

3.To prove the guilt of the accused, on the side of the prosecution, 15 witnesses have been examined and 26 documents were marked. On the side of the accused, 3 witnesses were examined and no document was exhibited.

4.At the conclusion of the trial, the trial court found the petitioner guilty and convicted him for the offences under sections 417 and 376 IPC and sentenced to undergo one year simple imprisonment and imposed a fine of Rs.1,000/- with default clause and under section 376 IPC, sentenced him to undergo 10 years rigorous imprisonment and imposed a fine of Rs.3,000/- with default clause and ordered to run the sentences concurrently. Against which, the criminal appeal has been preferred before this court. Pending appeal seeking suspense of sentence, this petition has been preferred by the petitioner.

5.Heard both sides.

6.Now the learned counsel appearing for the petitioner would submit that considering the age of the victim girl and the petitioner herein, it is a clear consensual sexual affair between the adults. So according to him, the offences under sections 417 and 376 IPC are not made out.

7.No doubt that reading of the statement of the victim shows that she was in love with the petitioner for many years; on the false promise of marrying her, he committed repeated sexual assault and because of that, she become pregnant. What happened after the above said pregnancy is not clear on record. It has been simply stated by the petitioner that only the victim girl refused to marry him, citing the communal issue.

8.But however, on going through the entire records and the statement of the victim girl, whether it was consensual in nature and on that ground, the offences are not attracted can be decided only at the time of appeal.

9.Considering the manner, in which the above said offence has been committed, this is not a fittest case to suspend the sentence. So, I find no merit in this petition and accordingly, this criminal miscellaneous petition is liable to be dismissed.



CRL MP(MD)



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10. In the result, this criminal miscellaneous petition is dismissed.

sd/-
23/01/2023

/ TRUE COPY /

/02/2023

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

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TO

- 1 THE FAST TRACK MAHILA JUDGE, THOOTHUKUDI DISTRICT.
- 2 THE INSPECTOR OF POLICE, ALL WOMEN POLICE STATION,
VILATHIKULAM POLICE STATION, THOOTHUKUDI DISTRICT.
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

COPY TO

THE SUPERINTENDENT,
CENTRAL PRISON,
PALAYAMKOTTAI.

+1 CC to M/s.T.S.MOHAMED MOHIDHEEN, Advocate (SR-1175[I] dated
25/01/2023)

ORDER
IN
CRL MP(MD) No.572 of 2023
IN
CRL A(MD) No.49 of 2023
Date :23/01/2023

RS/VR/SAR.4(01.02.2023) 3P-6C