



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

Thursday, the Sixth day of April Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.5156 of 2023
in
CRL A(MD)No.240 of 2022

ARUMUGAM

... PETITIONER/APPELLANT

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
KADAYAM POLICE STATION,
TIRUNELVELI DISTRICT.

... RESPONDENT/RESPONDENT

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to suspending the sentence imposed by the Mahila Judge, Tirunelveli in S.C No. 676/2017 dated 03.03.2022 and enlarge the appellant on bail pending disposal of the above criminal appeal.

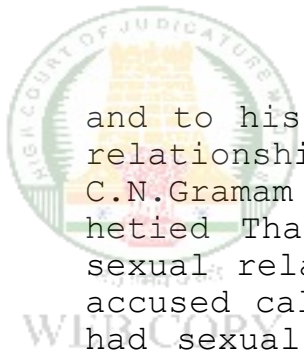
PRAYER IN CRL A(MD)NO. 240 OF 2022:

Pleased to call for the records and to set aside the Judgment made in S.C.No. 676 of 2017 by the Mahila Court, Tirunelveli dated 03.03.2022.

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.ANAND R, Advocate for the petitioner and of MR.SS.MADHAVAN, Government Advocate (Criminal Side) on behalf of the Respondent, the court made the following order:-

This petition has been filed to suspend the sentence imposed against the petitioner in S.C.No.676 of 2017, on the file of the Mahila Court, Tirunelveli, dated 03.03.2022 and enlarge the petitioner on bail pending disposal of the Criminal Appeal.

2. The case of the prosecution is that the victim girl got acquaintance with the first accused through wrong call and they have been made conversation often over phone, that during phone talk, the first accused informed her that he would marry, that since the first accused asked to come to Mettur Bus stop, she went to that place on 12.03.2021 morning, that he had taken the victim girl to Tirunelveli



and to his native village Alwarneri, where he tried to have a relationship, but she refused, that thereafter he had taken her to C.N.Gramam and both of them stayed in a house and at that time, he tied Thali pretending that he married her and consequently had sexual relationship with her few times, that thereafter, the first accused called the petitioner/appellant and the second accused also had sexual relationship with the victim girl forcibly against her will and that thereafter, when both the accused went out of the place, the victim girl escaped from there and returned to her place and lodged the complaint.

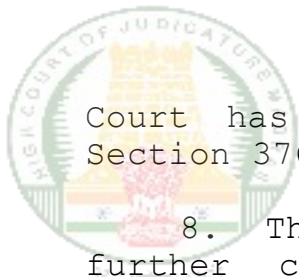
3. Originally, on the complaint lodged by the father of the victim girl as she was found missing, F.I.R. came to be registered in Cr.No.79 of 2014 as "Girl Missing" and after returning of the victim girl and based on the statement given by her, the case was altered to for the offence under Sections 366 and 376 I.P.C. After completing the investigation, a charge sheet has been filed and the same was taken on file in P.R.C.No.41 of 2015 and since the first accused was absconding, the case was ordered to be split up in P.R.C.No.62 of 2017 in respect of the first accused.

4. During trial, 17 witnesses have been examined as P.W.1 to P.W.17 and 22 documents have been exhibited as Exs.P.1 to P.22 and 6 material objects were marked as M.O.1 to M.O.6. The petitioner/appellant has adduced neither oral nor documentary evidence. The learned Sessions Judge, Mahila Court, Tirunelveli, upon considering the evidences adduced and on hearing the arguments of both sides, has passed the impugned judgment dated 03.03.2022 convicting the accused for the offence under Section 376(i) I.P.C., and sentenced him to undergo 10 years Rigorous Imprisonment along with a fine of Rs.50,000/-, in default to undergo 1 year Simple Imprisonment. Aggrieved by the judgment of conviction and sentence, the second accused has preferred the above Criminal Appeal

5. No doubt, the petitioner's earlier four applications for suspension of sentence were ordered to be dismissed, lastly, vide order dated 05.12.2022.

6. The learned counsel for the petitioner would submit that the entire reading of the evidence given by the prosecutrix examined as P.W.2 and the evidence of Medical Officer as P.W.15 would show that the offence of rape would not get attracted against the petitioner; that the statement given by the prosecutrix under Section 164 of Cr.P.C was suppressed by the prosecution and that the victim girl before the trial Court has given two contrary version regarding the occurrence.

7. The learned Government Advocate (Criminal Side) would submit that the evidence of P.W.1 to P.W.4 along with medical evidence would clearly prove the charges framed against the petitioner; that there is no scope or reason to discard the testimony of the prosecutrix and other corroborating witnesses and that the trial



Court has rightly convicted the accused for the offence under Section 376 I.P.C.

8. The learned Government Advocate (Criminal Side) would further contend that the Medical Officer, who examined the prosecutrix has noticed the injuries on her private part; that the trial Court has given specific finding that the prosecution has raised serious protest while the petitioner was having sexual relationship with her.

9. As rightly contended by the learned Government Advocate (Criminal Side), the points/aspects now canvassed by the petitioner's counsel are matter for consideration in the main appeal.

10. Considering the nature and gravity of the offence allegedly proved against him and the period of incarceration, this Court is not inclined to suspend the sentence at this point of time.

11. In the result, the Criminal Miscellaneous Petition is dismissed.

sd/-
06/04/2023

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/04/2023

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

DAS

TO

- 1 THE MAHILA JUDGE,
TIRUNELVELI.
- 2 THE INSPECTOR OF POLICE
KADAYAM POLICE STATION,
TIRUNELVELI DISTRICT.
- 3 THE SUPERINTENDENT
CENTRAL PRISON, PALAYAMKOTTAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER

IN

CRL MP(MD) No.5156 of 2023
in

CRL A(MD) No.240 of 2022

Date :06/04/2023