



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

Friday, the Ninth day of June Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

Crl.M.P(MD)No.7398 of 2023
in
Crl.A.(MD)No.386 of 2023

MAHARAJA

... PETITIONER/APPELLANT/
SOLE-ACCUSED

Vs

STATE REP. BY
THE DEPUTY SUPERINTENDENT OF POLICE,
PULIYANGUDI SUB DIVISION,
PULIYANGUDI POLICE STATION.
CR.NO.129/2015

... RESPONDENT/RESPONDENT/
COMPLAINANT

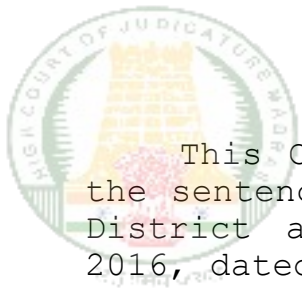
Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the execution of sentenced by granting bail in S.C.No.52/2016 dt 17.04.2023 on the file of the Learned IInd Additional Sessions Judge(PCR) Tirunelveli District pending disposal of the above Criminal Appeal and thus render justice.

PRAYER IN Crl.A.(MD)No.386 of 2023:-

To call for the records from the lower court in S.C.No.52 of 2016 on the file of the Learned II Additional District and Sessions Court (PCR), Tirunelveli dated 17.04.2023 and duly set aside the judgement, by acquitting the appellant.

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.V.KATHIRVELU, Senior Counsel for M/S. PRABHU.K, Advocate for the petitioner and of M/S.SS.MADHAVAN, Government Advocate(Crl.Side) on behalf of the Respondent the court made the following order:-

RESERVED ON	02.06.2023
PRONOUNCED ON	09.06.2023



This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned II Additional District and Sessions Judge (PCR), Tirunelveli, in S.C.No.52 of 2016, dated 17.04.2023, till the disposal of this Criminal Appeal.

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2. The case of the prosecution is that 8 months prior to 20.03.2015, the petitioner/sole accused called the defacto complainant by sign and when the defacto complainant went to Ramiah's land, the petitioner had forcibly committed sexual assault on the defacto complainant and on that basis, FIR came to be registered in Crime No.129 of 2015 against the petitioner.

3. The respondent, after completing the investigation, has filed the final report for the offences under Sections 376 and 506 (1) IPC and Section 3(2)(V) of SC/ST (POA) Act and the case was taken on file in P.R.C.No.14 of 2016 on the file of the Judicial Magistrate, Sivagiri. Subsequently, the case was committed to the II Additional District and Sessions Judge, (PCR) Tirunelveli, in S.C.No.52 of 2016.

4. During trial, the prosecution has examined 23 witnesses as P.W.1 to P.W.23 and exhibited 24 documents as Ex.P.1 to Ex.P.24. The defence has adduced neither oral nor documentary evidence.

5. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 17.04.2023 convicting the petitioner for the offence under Section 376 IPC and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 3 months Simple Imprisonment. Aggrieved by the said judgment of conviction and sentence, the accused has come forward with the present Criminal Appeal along with the above application for suspension of sentence.

6. The learned counsel appearing for the petitioner would submit that P.W.1-prosecutrix is aged about 24 years at the time of alleged occurrence, that P.W.1 in her evidence would say that she had not objected for sexual intercourse, that both of them were chatting with each other and that therefore P.W.1 is the consent party and as such, the question of forcible intercourse does not arise at all.

7. As rightly pointed out by the learned Government Advocate (Criminal Side), the learned trial Judge has dealt with the above aspects elaborately and specifically observed that a combined reading of evidence of prosecutrix, in the light of relevant provision of Sections 90, 375 and 376 IPC, it is crystal clear that the accused induced and compelled and forced the prosecutrix to have physical intercourse with her by making her to believe that he would



prosecutrix by giving false assurance to her that he would marry her and after she got pregnant, he refused to marry her.

8. It is pertinent to note that the petitioner was a married man on the date of alleged occurrence.

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9. As rightly pointed out by the learned Government Advocate (Criminal Side), the learned trial Judge has specifically observed that the accused never intended to marry the prosecutrix and procured her consent only for the reason of having sexual relation with her, which act of the accused falls squarely under the definition of rape as he had sexual intercourse with her consent, which was obtained under a misconception of fact as defined under Section 90 IPC.

10. As rightly contended by the learned Government Advocate (Criminal Side), since the petitioner was a married man and was having children at that time, he was not having any intention to marry the prosecutrix and that he obtained consent from her by indulging cheating and fraud.

11. The learned counsel appearing for the petitioner would further contend that the occurrence had happened 8 months prior to 20.03.2015, but P.W.1 has informed about the alleged occurrence to her mother-P.W.2 only after a period of 8 months, that the delay of 8 months is fatal and that the prosecution has not offered any explanation for the delay of 8 months and as such, the same is fatal to the case of the prosecution.

12. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the delay in lodging the complaint in such cases is not fatal to the prosecution automatically and that since the petitioner had given promise to marry the prosecutrix and they were in talking terms through cell-phone and the efforts of the parents of the prosecutrix were ended in vain, a complaint came to be lodged as last resort. The trial Court, as rightly pointed out by the learned Government Advocate (Criminal Side), taking note of the above aspects has come to the decision that the alleged delay caused in making the complaint on the part of the prosecutrix is acceptable and the same does not create any suspicion in the prosecution case.

13. The learned counsel appearing for the petitioner would further submit that the trial Court has failed to consider that DNA report alone is not a criteria for convicting the petitioner and that the trial Court has given much importance to Ex.P.11, the opinion of the Assistant Director which discloses that the child was born to P.W.1 and the petitioner.

14. It is pertinent to note that as per the DNA test report-
<https://www.pdn16.in/judis> P.W.17-expert has come to the conclusion that the



petitioner is the biological father of the female child born to the prosecutrix.

15. Considering the above facts and circumstances and also the nature and gravity of the offence allegedly proved and also taking note of the fact that the impugned judgment was pronounced only on 17.04.2023 and the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner.

16. In the result, this Criminal Miscellaneous Petition is dismissed.

sd/-
09/06/2023

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/06/2023

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

CSM

TO

- 1 THE II ADDITIONAL DISTRICT AND SESSIONS COURT (PCR),
TIRUNELVELI.
- 2 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI.
- 3 THE DEPUTY SUPERINTENDENT OF POLICE,
PULIYANGUDI SUB DIVISION,
PULIYANGUDI POLICE STATION.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP (MD) No.7398 of 2023
IN
CRL A (MD) No.386 of 2023
Date :09/06/2023

NA/BUC/SAR- /14.06.2023/4P/5C