



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

Tuesday, the Twentieth day of June Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.MURALI SHANKAR

CRL MP(MD) No.8333 of 2023
in
CRL A(MD) No.704 of 2022

SULTHAN MYDEEN

... Petitioner / Appellant

Vs

THE STATE REP BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
PALANI,
DINDIGUL DISTRICT.
(CRIME NO.6 OF 2019)

... Respondent / Respondent

Petition filed praying that in the circumstances stated therein and in the petition filed therewith the High Court may be pleased to Suspend the Sentence of Imprisonment imposed in S.C.No.90/2020 on the file of the Learned Mahalir Court (Fast Track Court) Dindigul dt 29.09.2022 and enlarge the petitioner appellant on bail pending disposal of the above said Criminal Appeal.

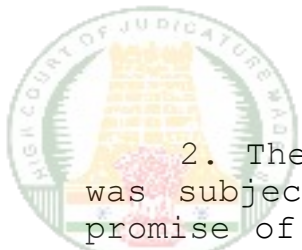
Prayer in CRL a(MD) No.704 of 2022:

To call for the records of the Court below and set aside the judgment and conviction dated 29.09.2022 made in S.C.No.90 of 2020 on the file of the learned Mahalir Court (Fast Track Court), Dindigul, and acquit the Appellant / Accused.

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.ANANTHA MURUGAN S M, Advocate for the petitioner and of Mr.R.SIVAKUMAR, Government Advocate (Crl. side) on behalf of the Respondent, the court made the following order:-

RESERVED ON	14.06.2023
PRONOUNCED ON	20.06.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Fast Track Mahila Court, Dindigul, in Spl.S.C.No.90 of 2020, dated 29.09.2022, till the disposal of this Criminal Appeal.



2. The case of the prosecution is that the defacto complainant was subjected to continuous rape by the petitioner, on the false promise of marriage, due to which, she tested positive of pregnancy test and when the same was informed to the petitioner, the petitioner abused the defacto complainant and criminally intimidated her and that on the basis of the complaint lodged, FIR came to be registered in Crime No.06 of 2019.

3. The respondent police, after completing the investigation, has filed the final report for the offences under Sections 417, 376 (2)(n) and 506(1) IPC and the case was taken on file in Spl.S.C.No.90 of 2020 and the same was pending on the file of the Fast Track Mahila Court, Dindigul.

4. During trial, the prosecution has examined 22 witnesses as P.W.1 to P.W.22 and exhibited 19 documents as Ex.P.1 to Ex.P.19. 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 29.09.2022 convicting the petitioner for the offences under Sections 417 and 376(2)(n) IPC and sentenced him to undergo 1 year Rigorous Imprisonment and to pay a fine of Rs.3,000/-, in default, to undergo 2 months Simple Imprisonment for the offence under Section 417 IPC and to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo 6 months Simple Imprisonment for the offence under Section 376(2)(n) IPC and that the above sentences were ordered to be run concurrently. Aggrieved by the said judgment of conviction and sentence, the accused has come forward with the present Criminal Appeal.

6. No doubt, the petitioner's earlier application for similar relief for suspension of sentence was ordered to be dismissed vide order dated 07.11.2022.

7. The learned counsel appearing for the petitioner would submit that the defacto complainant-P.W.1, who was aged about 28 years, would depose that the petitioner is running a grocery shop in her residential area and she had physical relationship with him for many times, that her evidence would go to show that she had given her consent and she shared lust with the petitioner willingly and that therefore, the offence under Section 376(2)(n) IPC would not made out against the petitioner. He would further submit that the trial Court has failed to consider the evidence of P.W.1 that she was admitted in Government Hospital, Madurai and where she fell down in bath room and the Doctors conducted surgery and taken out a dead male child from P.W.1, that the evidence of P.W.2-mother of P.W.1 that P.W.1 has fallen down in a bath room in Palani Hospital and where she was admitted in Government Hospital, Madurai and that



the evidence of P.W.3-brother of P.W.1 that P.W.1 fell down in house at Palani and thereafter was admitted in Government Hospital, Madurai, that P.W.1 to P.W.3 in their evidence would admit that the petitioner's family is residing in the upstairs of his grocery shop, that the P.W.1 was very well-known about the petitioner and his family status and his residential house and that the P.W.1 knowing the entire facts about the petitioner and his family voluntarily went to the petitioner's grocery shop and shared her bed with him. He would further submit that there are contradictions in the evidence of P.W.1 and P.W.2 with regard to the author of the complaint and that the learned trial Judge, without considering the above material aspects, has mechanically recorded the conviction.

8. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that the petitioner is a married man and he cheated the defacto complainant on the false promise to marry her and subjected her to sexual intercourse repeatedly, that when the pregnancy of the defacto complainant was brought to the notice of the petitioner, he criminally intimidated her, that DNA report has also proved positive stating that the petitioner is the biological father of the said foetus and that the learned trial Judge, considering the entire evidence in proper perspective, has rightly convicted the petitioner.

9. As rightly pointed out by the learned Government Advocate (Criminal Side), the petitioner is a married person and got two children.

10. As rightly contended by the learned Government Advocate (Criminal Side), the petitioner has taken a stand that it was purely a consensual act between the parties and the same was dealt with and rejected by the trial Court.

11. Considering the above facts and circumstances of the case and also the seriousness and gravity of the offence allegedly proved against the petitioner and also the fact that the impugned judgment was passed on 29.09.2022 and the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner.

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

sd/-
20/06/2023

/ TRUE COPY /

/07/2023

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



To

1.The Sessions Judge,
Mahalir Court (Fast Track Court),
Dindigul.

2.The Inspector of Police,
All Women Police Station,
Palani, Dindigul District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Copy to:

The Superintendent,
Central Prison, Madurai.

ORDER

IN

CRL MP (MD) No.8333 of 2023
in

CRL A (MD) No.704 of 2022

Date :20/06/2023

ED/VR/SAR- (04/07/2023) 4P 5C