



CRL MP(MD) No.10110 of 2023

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

Friday, the Tenth day of November Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice P. VADAMALAI

CRL MP(MD) No.10110 of 2023

in

CRL A(MD)No. 525 of 2022

SOLAI GANESAN ...PETITIONER/ APPELLANT/ ACCUSED NO.1
(CONVICT PRISONER NO.24219
AT CENTRAL PRISON,TRICHY)

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
PUDUKKOTTAI,
PUDUKKOTTAI DISTRICT.
IN CRIME NO.5/2018.

... RESPONDENT/RESPONDENT
/DEFACTO COMPLAINANT

Criminal Miscellaneous 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 imposed on the petitioner by the Sessions Judge,Mahila Court,Pudukottai in Special Sessions Case No.26 of 2018 dated 14.06.2022 and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.

PRAYER IN CRL A(MD)No. 525 of 2022:

Pleased to Call for the records relating to the judgment passed in Spl.S.C.No. 26/2018 on the file of the Court of the Learned Mahila Court, Pudukottai dated on 14.06.2022 and set aside the same and acquit the Appellant/Accused No.1 from the

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charges leveled against him.

Order : This Criminal Miscellaneous Petition coming up for orders on this day, upon perusing the petition filed in support thereof and upon hearing the arguments of MR.V.KATHIRVELU, Senior Counsel for M/S HAJA MOHIDEEN.A, Advocate for the petitioner and of MR.B.NAMBISELVAN, Additional Public Prosecutor on behalf of the Respondent, the court made the following order:-

RESERVED ON	19.10.2023
PRONOUNCED ON	10.11.2023

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Mahila Court, Pudukkottai, in Spl.S.C.No.26 of 2018, dated 14.06.2022, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that the petitioner/first accused and the defacto complainant are divorcees, that the petitioner, without informing about the same, had lived with the defacto complainant as husband and wife, that the petitioner and the accused 2 to 5, had obtained money from the defacto complainant on several times and had been living in the income of the defacto complainant, that by demanding dowry, they had caused mental stress to her, that in order to obtain money from the defacto complainant, the petitioner and the other accused told her that the first wife of the petitioner demanded Rs.5 lakhs as settlement for her maintenance and



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compelled her to part with the said amount, that when the defacto complainant was in Singapore, the petitioner had attracted the victim girl by talking cunningly, that by suppressing his first marriage as well as his second marriage with the defacto complainant, he had created an image as if he was not married and made the victim girl to believe the same, that the petitioner with the help of the other accused had kept the victim girl in the fourth accused's house and at that time, he had taken a photo with the victim girl in his cell phone and that by using the said photo, the petitioner induced the victim girl to marry him. Hence, FIR came to be registered in Crime No.5 of 2018 and it was taken cognizance in Spl.S.C.No.26 of 2018 by the Mahila Court, Pudukottai.

3. During trial on the side of the prosecution, 14 witnesses have been examined as P.W.1 to P.W.14, 26 documents have been exhibited as Ex.P.1 to Ex.P.26 and 2 material objects were marked as M.O.1 and M.O.2 and on the side of the accused, 2 witnesses have been examined as D.W.1 and D.W.2, 15 documents have been exhibited as Ex.D.1 to Ex.D.15 and no material object was marked.

4. The learned Sessions Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment dated 14.06.2022, convicting the petitioner/first accused and

sentenced him as follows:-

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Provision under which convicted	Sentence
Under Section 417 IPC	to undergo rigorous imprisonment for 1 year and to pay a fine of Rs.10,000/- in default to undergo rigorous imprisonment for 6 months
under Section 420 IPC	to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.50,000/- in default to undergo rigorous imprisonment for 1 year
under Section 494 IPC	to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.50,000/- in default to undergo rigorous imprisonment for 1 year
under Section 495 IPC	to undergo rigorous imprisonment for 10 years and to pay a fine of Rs.50,000/- in default to undergo rigorous imprisonment for 1 year
under Section 496 IPC	to undergo rigorous imprisonment for 7 years and to pay a fine of Rs.50,000/- in default to undergo rigorous imprisonment for 1 year
under Section 498 (A)(b) IPC	to undergo rigorous imprisonment for 3 years and to pay a fine of Rs.50,000/- in default to undergo rigorous imprisonment for 1 year
under Section 506 (1) IPC	to undergo rigorous imprisonment for 2 years

5. Aggrieved by the said judgment of conviction and sentence, the first

accused has preferred the present appeal along with the above criminal
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miscellaneous petition for suspension of sentence.

6. No doubt, this Court, vide common order dated 14.07.2022, has suspended the sentence imposed on the accused 2 to 4, but the petitioner/first accused's earlier four applications for suspension of sentence were ordered to be dismissed, lastly, vide order dated 05.04.2023.

7. The learned Senior Counsel appearing for the petitioner would submit that the trial Court has failed to notice that the prosecution case is bristles with contradictions and it is highly artificial and unbelievable, that the trial Court has passed the impugned judgment based on the presumption and surmise and conjecture which are not relevant to the circumstances of the case, that the trial Court has committed an error that the first wife-P.W.4 admitted in her cross-examination that she did not made any complaint against the petitioner with regard to the second marriage and as such, the charges under Sections 494, 495 and 496 IPC are not tenable, that Ex.P.3-marriage certificate is a foreign document and its genuineness and authenticity should have been proved by the prosecution, that the so called marriage between the petitioner and the defacto complainant was not proved by the prosecution and that therefore Section 494 IPC is not attracted at all.

8. The learned Senior Counsel appearing for the petitioner would further submit that the trial Court has failed to consider the evidence of P.W.1 that her



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marriage with the petitioner was not solemnized neither under Hindu Customs nor Christian Customs, that the said marriage was also not registered as per the Special Marriage Act and as such, the marriage cannot be considered as a shame marriage, that the trial Court has failed to consider the fact that P.W.1 had developed intimacy with another man and the same was proved through the documents Ex.D.1 to Ex.D.5, that all the documents were falsely created by P.W.1 and the same were given to the police and the same were used as evidence without valid proof and authenticity and that there is no substantial oral and documentary evidence to prove the charges levelled against the petitioner.

9. As rightly observed by the learned Judge in the earlier applications for suspension of sentence, the above aspects and points now canvassed by the petitioner's side are matter for consideration in the main appeal. The earlier applications filed by the petitioner was dismissed by this Court by passing elaborate order and now this petition has been filed mainly on the ground that the petitioner was in judicial custody from 14.06.2022. Now, this application is filed by the petitioner without referring the change of circumstances to consider the case.

10. Since there is no change of circumstances and also considering the gravity of offence allegedly proved against the petitioner and the punishment awarded and also considering the conduct and attitude of the petitioner, this Court is of view that



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this petitioner is not entitled for suspension of sentence.

Accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-
10/11/2023

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/11/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TTA
TO

- 1 THE SESSIONS JUDGE, MAHILA COURT, PUDUKKOTTAI.
- 2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, PUDUKKOTTAI,
PUDUKKOTTAI DISTRICT.
- 3 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.10110 of 2023
in
CRL A(MD)No. 525 of 2022
Date :10/11/2023

PKP/SKN/SAR- /29.11.2023/ 7P/ 5C

Madurai Bench of Madras High Court is issuing certified
copies in this format from 17/07/2023