



CRL MP(MD) No.11747 of 2023

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

Wednesday, the Sixteenth day of August Two Thousand and Twenty Three

PRESENT

The Hon`ble Mr.Justice K.K. RAMAKRISHNAN

CRL MP(MD) No.11747 of 2023

in

CRL A(MD)No.286 of 2022

S.SURENDHAR

... PETITIONER/ APPELLANT/ SOLE ACCUSED

Vs

THE STATE REP BY,
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
ARANTHANGI,
PUDUKKOTTAI DISTRICT.

(IN CRIME NO.01/2019). ... RESPONDENT/RESPONDENT/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 by the learned Sessions Family Judge, Mahila Court, Pudukkottai dated 15.03.2023 in SC.No.85 of 2019 to undergo(10) ten years Rigorous Imprisonment for the offence U/s.376(1) of IPC and enlarge the petitioner on bail.

PRAYER IN CRL A(MD)No. 286 of 2022:

Pleased to call for the records relating to the Sessions Case No. 85 of 2019 on the file of the Mahila Court, Pudukkottai and set aside the Judgment dated 15.03.2022 passed therein and acquit the appellant by allowing this Criminal Appeal.

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 R.PARANJOTHI, Advocate for the petitioner and of



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MR.M.MUTHUMANIKKAM, Government Advocate (Criminal Side) on behalf of the Respondent, the court made the following order:-

The petitioner is sole accused in S.C.No.85 of 2019 filed this Suspension of Sentence Petition.

2. The learned counsel appearing for the petitioner submitted that the event spoken by the victim and the prosecution is totally unreliable and medical evidence is not supporting the case of the prosecution. Because of some motive, false case has been foisted against the petitioner. The said contention was already considered by this Court, on 22.09.2022 while dismissing CrI.M.P(MD).No.4874 of 2022 in CrI.A (MD).No.286 of 2022, which reads as follows:

“This Criminal Miscellaneous Petition is filed to suspend the sentence imposed by the learned Sessions Judge, Mahila Court, Pudukkottai, dated 15.03.2022, in S.C.No.85 of 2019 and enlarge the petitioner on bail, pending disposal of the above said Criminal Appeal.

2.The learned counsel for the petitioner submitted that the petitioner, who is the sole accused in this case, has been found guilty and convicted by the learned Sessions judge, for the offence under Section 376(1) of IPC and sentenced to undergo 10 years rigorous imprisonment and to pay a fine of Rs.5,000/- in default to undergo simple imprisonment for a period of one year, in S.C.No.85 of 2019 on



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the file of the learned Sessions Judge, Mahila Court, Pudukkottai. Set off under Section 428 Cr.P.C. was also ordered.

3.The case of the prosecution in brief: The Complainant namely Jaya is aged about 45 years. The accused Surendhar is aged about 20 years. Both belongs to the very same village. The complainant Jaya separated from her husband from 10 years back. Now, she is living along with her son and mother. On 14.01.2019 at about 06.00 p.m., when the complainant was grazing goat near Mellappattu Pillayar Temple, North Kanmaikarai, the accused person took the complainant by lifting her, damaging her clothes, raped her, also committed unnatural sex assault and threatened her not to disclose about the said occurrence to any one. Based upon the above said complaint, the case was registered and during the course of trial 7 witnesses have been examined and 11 documents were marked. Apart from that three material objects were also marked.

4.At the conclusion of the trial, the trial Court found the petitioner guilty under Section 376 (1) IPC and had sentenced to undergo 10 years rigorous imprisonment and imposed a fine of Rs.5,000/-. Challenging the above said conviction and sentence, appeal has been preferred by



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the petitioner. Pending appeal, this petition has been filed seeking suspension of sentence.

5.The learned counsel for the petitioner would submit that the event spoken by the PW1, who is the victim and the prosecution is totally unreliable and absolutely, it is against the probability. According to him, this petitioner is aged about 23 years and it is unbelievable that he can lift the victim, who is aged about 40 years; medical evidence is not supporting the case of the prosecution and even as per the statement of PW1, the complaint was written by the son; There are some alterations in the complaint, which are material in nature. The eyewitness, who was stated to be the witness to the occurrence, supported the defence version. Because of some motive, this case has been foisted and apart from that he would also submit that examination is going to be commenced for the petitioner shortly.

6.Per contra, the learned Additional Public Prosecutor would submit that even as per the materials collected during the course of investigation, the character of the petitioner is not good and apart from that the case has been proved beyond reasonable doubt before the trial Court. So no interference is called for for suspending the sentence.



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7. Heard both sides and perused the records.

8. The medical examination report has shown no external injuries on the private part of PW1. But however, nail marks were found in the neck portion and hands; no trace of sperm was found in the vaginal smear. Reading of the statement of the PW1 shows that she was sexually assaulted and raped. Even though there was no external injuries on the private parts of the victim, nail marks were available. The learned counsel for the petitioner would submit that those marks would have been sustained even during the course of grazing the goats. This is a matter for consideration during the appeal. The external injuries that was found on the neck portion corroborates the occurrence. Only a remote previous motive has been suggested to the PW1.

9. Considering the gravity of the allegation, if the petitioner is released on bail after suspending the sentence, he may again cause trouble to the victim. So this is not a fit case to exercise the jurisdiction to suspend the sentence. Therefore, this petition deserves to be dismissed and accordingly, dismissed."

3. In view of the dismissal of the said petition, the petitioner filed second suspension of sentence petition in CrI.M.P(MD).No.14186 of 2022 in CrI.A(MD).



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No.286 of 2022 on the ground that the complaint was allegedly written by the defacto complainant's son. The petitioner and the defacto complainant's son were friends. The trial Court has failed to consider the motive attributed for lodging the false complaint. The said contention also considered by this Court while dismissing the petition on 19.04.2023, which reads as follows:

“ This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioner by the learned Sessions Judge, Mahila Court, Pudukkottai, in S.C.No.85 of 2019, dated 15.03.2022, till the disposal of this Criminal Appeal.

2. The case of the prosecution is that the defacto complainant and the petitioner/sole accused belong to the same village, that the defacto complainant got separated from her husband 10 years back and she is living with her son and mother, that on 14.01.2019 at about 06.00 p.m., when the defacto complainant was grazing goats near Mellappattu Pillaiyar Temple north Kanmaikarai, the petitioner had taken the defacto complainant, by lifting her and damaging her clothes, committed sexual assault and also unnatural sexual assault and threatened her not to disclose the occurrence to anyone and that on the basis of the complaint lodged, FIR came to be registered in Crime No.1 of 2019 against the petitioner.



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3. The respondent police, after completing the investigation, has laid the final report and the case was taken on file in P.R.C.No.11 of 2019 on the file of the District Munsif cum Judicial Magistrate, Thirumayam. Thereafter, the case was committed to the Court of Principal Sessions Pudukkottai and subsequently, the case was made over to the Mahila Court, Pudukkottai in S.C.No.85 of 2019.

4. During trial, the prosecution has examined 7 witnesses as P.W.1 to P.W.7, exhibited 11 documents as Ex.P.1 to Ex.P.11 and marked 3 material objects as M.O.1 to M.O.3. The defence has examined 3 witnesses as D.W.1 to D.W.3 and adduced no 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 15.03.2022 convicting the petitioner for the offence under Section 376(1) IPC and sentenced him to undergo 10 years Rigorous Imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo 1 year Simple Imprisonment. 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



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suspension of sentence was ordered to be dismissed vide order dated 22.09.2022.

7. During the pendency of the above application, taking note of the fact that the petitioner has to write his college examinations, interim bail was granted for a period of one month vide order dated 24.11.2022 and subsequently, the interim bail was extended till 23.03.2023. When the matter was taken up for hearing on 23.03.2023, considering the submission made by the learned Government Advocate (Criminal Side), this Court directed the petitioner to surrender before the Superintendent of Prison, Central Prison, Trichy on 27.03.2023 at about 10.30 a.m. In pursuance of the said direction, the petitioner has surrendered before the Superintendent of Prison and he is in prison till now.

8. The learned counsel appearing for the petitioner would submit that the complaint was allegedly written by the defacto complainant's son, that the petitioner and the defacto complainant's son were friends and that the trial Court has failed to consider the motive attributed for lodging the false complaint.

9. The learned counsel appearing for the petitioner would further submit that there is no medical evidence to corroborate the prosecution



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case, that since the prosecution has failed to examine the occurrence witness, the said witness was examined by the defence as D.W.1 and that D.W.1 has given evidence disputing the occurrence.

10. As rightly contended by the learned Government Advocate (Criminal Side), though the medical officer has observed that there were no external injuries on the private part of the victim, nail marks were found in the neck portion and hands, that P.W.1 has given categorical evidence that she was sexually assaulted and raped by the petitioner and that the trial Court, considering the evidence available on record, has convicted the petitioner for the offence under Section 376(1) IPC.

11. The learned counsel appearing for the petitioner would submit that the petitioner being a college student may be granted suspension of sentence so as to enable him to complete the semester examinations.

12. The learned Government Advocate (Criminal Side) appearing for the respondent would submit that as per the college authorities, the petitioner is not having sufficient attendance to write the examinations and considering the seriousness of the charge alleged and proved against the petitioner, he is not entitled to get the relief claimed.

13. Considering the above facts and circumstances and the nature and



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gravity of the charges allegedly proved against the petitioner and also the period of incarceration, this Court is not inclined to suspend the sentence imposed on the petitioner at this point of time.

14. In the result, this Criminal Miscellaneous Petition is dismissed”

4. Hence, this Court does not find any new grounds to allow this petition and accordingly, this Criminal Miscellaneous Petition is dismissed.

sd/-
16/08/2023

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/08/2023
Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

DSS
TO

- 1 THE SESSIONS JUDGE
MAHILA COURT, PUDUKKOTTAI.
- 2 THE JUDICIAL MAGISTRATE,
ARANTHANGI.
- 3 DO THROUGH:
THE CHIEF JUDICIAL MAGISTRATE,
PUDUKKOTTAI DISTRICT.
- 4 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION,
ARANTHANGI,
PUDUKKOTTAI DISTRICT.



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- 5 THE SUPERINTENDENT
CENTRAL PRISON, TRICHY DISTRICT.
- 6 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER
IN
CRL MP(MD) No.11747 of 2023
in
CRL A(MD)No.286 of 2022
Date :16/08/2023

PKP/DD/SAR- /28.08.2023/ 11P/7C

Madurai Bench of Madras High Court is issuing certified
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