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Crl.M.P.No.11749 of 2024
in Crl.A.No.1063 of 2024

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2024

CORAM:

THE HON'BLE **MR.JUSTICE M. NIRMAL KUMAR**

Crl.M.P.No.11749 of 2024

in

Crl.A.No.1063 of 2024

Rajan Babu

S/o.Singaravelan

... Petitioner/A1

Vs.

State Rep by

The Inspector of Police,

Devala Police Station,

Devala, Nilgris District.

(Crime No.331 of 2011)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(3) of Cr.P.C to suspend the sentence imposed on the petitioner/1st Accused by judgment dated 31.01.2024 made in S.C.No.83 of 2016 on the file of learned Sessions Judge of Magalir Neethimandram (FTMC), Udhagamandalam, pending disposal of the above Criminal Appeal.

For Petitioner : Mr.E.V.Chandru
for Mr.E.Chandrasekaran

For Respondent : Mr.R.Vinothraja
Government Advocate (Crl. Side)



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ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence imposed on the petitioner/1st Accused by judgment dated 31.01.2024 made in S.C.No.83 of 2016 on the file of learned Sessions Judge of Magalir Neethimandram (FTMC), Udthagamandalam, pending disposal of the above appeal.

2.The petitioner/A1 in S.C.No.83 of 2016 was charged along with his father, mother and sister as A1 to A4 for offence under Section 498(A) and 304(B) of I.P.C. During trial, petitioner's parents passed away and A4/petitioner's sister acquitted by the trial Court by judgment dated 31.01.2024. The petitioner was acquitted of charge under Section 304(B) I.P.C. but convicted for offence under Section 498(A) I.P.C. and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.1,000/-, against which, the petitioner preferred an appeal in Crl.A.No.1063 of 2024 before this Court along with suspension of sentence petition.



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3. During trial, on the side of the prosecution, PW1 to PW12 examined and marked Exs.P1 to P12. On the side of the defence, no witnesses examined and no documents marked. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, had convicted the petitioner as stated above.

4. The learned counsel for petitioner submitted that on 01.11.2022 the petitioner's wife/Jayalakshmi consumed poison and on the same day she was admitted in the hospital. Thereafter, on the complaint of Jayalakshmi a case was registered in Crime No.331 of 2011 under Section 309 of I.P.C. Since the said Jayalakshmi passed away in the hospital on 02.11.2022, the case was altered to Section 174 Cr.P.C. and after RDO enquiry it was altered to 498(A) and 304(B) of I.P.C. The trial Court failed to see that the petitioner had rushed his wife to the hospital, admitted her and stayed there but due to the sudden death of Jayalakshmi her family members in an agitated mood had lodged a complaint against the petitioner as though the petitioner had



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demanded gold jewellery as dowry and for that reason she committed suicide.

The evidence of PW2/paternal aunt of the deceased confirms that Jayalakshmi suffered stomach pain in a short span of six months of married life, she took treatment for stomach pain. The petitioner's case is that due to unbearable stomach pain she consumed pesticide. He further submitted that in the hospital, she took treatment for three days but no request made for recording dying declaration or no Doctor examined to find about the condition of her health. Due to medical complication, she died. He further submitted that the petitioner is an Auto Driver. Within a short period she lost his wife and he took all steps to save his wife. The trial Court found that the petitioner is not the reason for abetment for his wife's death, but on the contrary convicted for cruelty under Section 498A I.P.C., which is not proper. Further submitted that the petitioner has arguable points and fair chance to succeed in this appeal. Hence, he prays for granting suspension of sentence to the petitioner.



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5.The learned Government Advocate (Crl. Side) opposed the petitioner's contention and submitted that the marriage between the petitioner and Jayalakshmi took place six months prior to her death. During the marriage, a demand made for 10 sovereigns of gold jewels by the petitioner's family. Jayalakshmi's family presented 7 ½ sovereigns and promised to present 2 ½ sovereigns jewels later. This 2 ½ sovereigns constantly demanded by the petitioner's family and harassed the deceased. For that reason the victim consumed pesticide and ended her life. Since the death is within 7 years of the marriage, RDO conducted enquiry. After RDO's report, case was altered, witnesses examined and the trial Court on the evidence and material convicted the petitioner. Hence, prays for dismissal of the petition.

6.Considering the submissions made and on perusal of the materials available on record, it is seen that the petitioner rushed the victim to the hospital to save her life. Pesticide purchased by the victim on her own.



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The victim earlier suffering with stomach pain and regularly visiting the hospital for six months is not disputed. The trial Court acquitting the petitioner under Section 304-B of I.P.C. but convicting him under Section 498-A of I.P.C. on the same set of evidence appears to be improper. Hence, the conviction of the petitioner needs reconsideration. Further the trial Court had already suspended the sentence of the petitioner.

7. Accordingly, the substantial sentence of imprisonment imposed on the petitioner is suspended with the following conditions:

(a) The petitioner/A1 is ordered to be enlarged on bail, on condition that he shall execute a bond for a sum of Rs.10,000/- (Rupees Ten thousand only), with two sureties, each for a like sum to the satisfaction of the learned Sessions Judge of Magalir Neethimandram (FTMC), Udthagamandalam.

(b) The petitioner/accused and the sureties shall affix their photographs and Left Thumb



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Impressions in the surety bonds and the learned Sessions Judge may obtain a copy of their Aadhaar Cards or Bank Pass Books to ensure their identities.

(c) The petitioner shall appear before the Trial Court once in three months at 10.30 a.m. on the first working day of the month, until the disposal of the appeal and if he is not able to appear before the Trial Court on that day, he shall make arrangements to file an application under Section 317 Cr.P.C. and shall appear before the Trial Court on any other day in lieu of the date of his absence as directed by the Trial Court.

8. Accordingly, this Criminal Miscellaneous Petition is ordered.

30.08.2024

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M. NIRMAL KUMAR, J.

rsi

To

- 1.The Inspector of Police,
Devala Police Station,
Devala, Nilgris District.
- 2.The Sessions Judge of Magalir Neethimandram (FTMC),
Udhagamandalam.
- 3.The Public Prosecutor,
High Court, Madras.

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