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*Crl.M.P.No.15667 of 2023
in Crl.A.No.1060 of 2023*

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2024

CORAM:

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

Crl.M.P.No.15667 of 2023
in
Crl.A.No.1060 of 2023

P.Raja

... Petitioner/A1

Vs.

1.The State

Rep by the Deputy Superintendent of Police,
Kallakurichi Sub Division,
Kallakurichi,
Kallakurichi District.

2.The State

Rep by the Inspector of Police,
All Women Police Station,
Kallakurichi,
Kallakurichi District.

3.Gayathri

... Respondents

PRAYER: Criminal Miscellaneous Petitions filed under Sections 389(1) & 439 of Cr.P.C to suspend the sentence of imprisonment imposed in the judgment passed in Special S.C.No.49 of 2021 by the Special Court for trial of cases under SC and ST (Prevention of Atrocities) Act, Villupuram and enlarge the petitioner on bail pending disposal of the above Criminal Appeal.



*Crl.M.P.No.15667 of 2023
in Crl.A.No.1060 of 2023*

For Petitioner : Mr.S.B.Viswanathan

For Respondents1 & 2 : Mr.C.E.Pratap
Government Advocate (Crl. Side)

For Respondent-23 : Mr.M.Suresh Sankar
Legal Aid Counsel

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence of imprisonment imposed on them in S.C.No.49 of 2021 by a judgment dated 25.08.2023 passed by the learned Sessions Judge, Special Court for Exclusive Trial of Cases Registered under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, Villupuram and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/A1 in S.C.No.49 of 2021 was convicted by the Trial Court by judgment dated 25.08.2023 for offence under Sections 417 of I.P.C. and sentenced to undergo one year simple imprisonment and to pay a fine of Rs.50,000/-, against which, the petitioner/A1 filed Crl.A.No.1060 of 2023 along with the instant miscellaneous petition seeking suspension of sentence and bail.



*Crl.M.P.No.15667 of 2023
in Crl.A.No.1060 of 2023*

WEB COPY

3.The case of the prosecution is that the de-facto complainant and the petitioner were known to each other from school days and they developed love affairs with each other. When the de-facto complainant was studying Engineering graduation she used to visit the petitioner, who was in the village. On one such occasion on 16.10.2015, the petitioner called the de-facto complainant to his house to introduce his relatives. The de-facto complainant went there and found no one in the house except the petitioner's grandmother and thereafter he had taken the de-facto complainant to the bed room. There, on the promise that the petitioner would marry her, they had physical relationship. After some time, the de-facto complainant got job and working in Chennai. Thereafter the petitioner was staying with his mother, who was working as cook in Don Bosco Agricultural College, Ranipet District. The de-facto complainant used to visit there and there also the petitioner had physical relationship with the de-facto complainant. Thereafter the petitioner had joined as Jawan in the Indian Army in the year 2016 and whenever he comes to Chennai he used to meet de-facto complainant and both of them used to have physical relationship.

3.1.During the year 2021, when the petitioner had come for holiday, the de-facto complainant insisted for the marriage. The petitioner informed



*Crl.M.P.No.15667 of 2023
in Crl.A.No.1060 of 2023*

that he would marry her after his sister's marriage. Later she came to know that he started avoiding the de-facto complainant and finally on 05.07.2021 she came to know that marriage arrangements being made for the petitioner. The de-facto complainant went to the house of the petitioner, enquired his mother, sister and other family members. At that time, she was insulted, abused calling by her caste name and she was chased out of the house. Hence, she lodged a complaint to the respondent police. On receipt of the complaint a case has been registered, investigation completed, witnesses examined, collected documents and charge sheet filed.

4.During trial, on the side of the prosecution 27 witnesses examined as PW1 to PW27 and Exs.P1 to P27 marked. On the side of the defence, no witnesses examined and marked Ex.D1. On conclusion of the trial, the Trial Court on the evidence of witnesses and the materials produced, had convicted the petitioner as stated above.

5.The contention of the petitioner is that a bare reading of the complaint/Ex.P1 would clearly show that the petitioner and the de-facto complainant were classmates. From their school days from 11th standard



*Crl.M.P.No.15667 of 2023
in Crl.A.No.1060 of 2023*

onwards they developed friendship and they also had close relationship.

From the year 2015, the alleged physical relationship said to have taken place and it continued till 2021 for almost 8 years without any opposition or objection by the de-facto complainant. He further submitted that the de-facto complainant, who is a major, educated person, knowing well about the happenings and its consequences, had continued the relationship with the petitioner. Thereafter on refusal of marriage, making false allegations and lodging a complaint is not proper. He further submitted that charge sheet has been filed against the petitioner for various other offences including offence under Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act (in short 'SC/ST (POA) Act) apart from Section 417 of IPC. The trial Court had framed charges against the petitioner for offence under Sections 366, 376(2)(n), 342 IPC r/w 3(1)(r), 3(1)(s), 3(1)(w)(i) and 3(2)(v) of SC/ST (POA) Act and Section 417 of IPC. Except for offence under Section 417 of IPC, in all other offences the petitioner had been acquitted.

5.1. He further submitted that in spur of the moment the complaint has been lodged. Thereafter the de-facto complainant not pursued the case. Now she is married and settled with her family. The petitioner is also married and having his own family. The other witnesses are all hearsay witnesses with



Crl.M.P.No.15667 of 2023
in Crl.A.No.1060 of 2023

regard to the primary charge. He further submitted that the trial Court had already suspended the sentence imposed on the petitioner. Further submitted that the petitioner has arguable points and fair chance of success in this appeal. Hence, he prays for granting suspension of sentence to the petitioner.

6.The learned Government Advocate (Crl. Side) on the other hand filed his counter, which reads as follows:

“3. It is submitted that based on the above complaint, a case was registered in AWPS, Kallakurichi, Crime No.15 of 2021, U/s.417, 376 IPC & 3(1)(r), 3(1)(s) SC/ST (PoA) Act, 2015 against the accused persons A1 to A6 on 06.07.2021 at about 21.30 hours by Tmt.Bhuvaneswari, the then Inspector of Police and the same was submitted before TmtRajalakshmi, the then Deputy Superintendent of Police for investigation.

4. It is submitted that during the course of investigation, the then Deputy Superintendent of Police have went to the scene of occurrence and drew rough sketch and prepared observation mahazar in the presence of witnesses and also examined the defacto complainant and other witnesses and recorded their statements.

5. It is submitted that during the course of investigation, on 11.07.2021 at about 15.00 hours, the then Deputy Superintendent of



Crl.M.P.No.15667 of 2023
in Crl.A.No.1060 of 2023

WEB COPY

Police have arrested the A-2 and recorded her confession statement in the presence of witnesses and later, she produced before the Judicial Magistrate No.1, Kallakurichi and remand her to judicial custody.

6. It is submitted that based on the witnesses statements, on 11.07.2021, the then Deputy Superintendent of Police has altered the section of this case into U/s 417, 376 IPC r/w SC/ST 3(1)(r), 3(1)(s), 3(2)(v) (PoA) Act, 2015. Then, on 28.07.2021, the then Deputy Superintendent of Police removed the accused persons A3 to A6 from the above case in Cr.No. 15/2021.

7. It is submitted that after completion of elaborate and detailed investigation, based on the statements of witnesses, material evidence, on 08.09.2021, the then Deputy Superintendent of Police has altered the section of this case into U/s.366, 417, 342, 376(2)(n) IPC r/w 3(1)(r). 3(1)(s), 3(1)(w) (i), 3(2)(va), 3(2)(v) PoA, 2015 and on the same day she have filed a charge sheet against the accused persons A1 & A2 before the Sessions Judge, Special Court for Exclusive Trial of Cases Registered under the SC and ST (POA) Act, 1989, Villupuram and the same was taken on file vide S.C.No.49 of 2021.

8. It is submitted that the prosecution has examined P.W.1 to P.W.27 witnesses. On the defence side, DW1 was examined, no exhibits and no material objects were marked.



Crl.M.P.No.15667 of 2023
in Crl.A.No.1060 of 2023

WEB COPY

PROSECUTION SIDE WITNESSES		
Rank of Witnesses	Witnesses	Gist of the Deposition
P.W. 1	Selvi.Gayathri/De-facto Complainant	Speaks about the occurrence and lodged a complaint [Ex.P.1] before the respondent police station.
P.W.2	Tmt.Kasiammal/Mother of the de-facto complainant	Deposed that corroborated the same version of P.W.1
P.W.3	Tr.Dharmalingam/Father of the de-facto complainant	Deposed that corroborated the same version of P.W.1
P.W.4	Tmt.Savithiri/Sister of the complainant	Deposed that corroborated the same version of P.W.1
P.W.5	Tr.Kasinathan	Deposed that corroborated the same version of P.W.1
P.W.6	Tr.Arunachalam	Deposed that corroborated the same version of P.W.1
P.W.7	Tr.Manjunathan	Deposed that corroborated the same version of P.W.1
P.W.8	Tr.John Sekar	Deposed that corroborated the same version of P.W.1
P.W.9	Tr.Pazhanimuthu	Deposed that corroborated the same version of P.W.1
P.W.10	Tmt.Shalini	Deposed that corroborated the same version of P.W.1
P.W.11	Tmt.Vijaya	Deposed that corroborated the same version of P.W.1
P.W.12	Tr.Sondarajan	Deposed that corroborated the same version of P.W.1
P.W.13	Tr.Babu	Attested in Observation mahazar [Ex.P.4]
P.W.14	Tr.Johnson	Attested in Observation mahazar

Dy. Supdt. of Police,
Kallakurichi Sub. Division
Kallakurichi.



Crl.M.P.No.15667 of 2023
in Crl.A.No.1060 of 2023

WEB COPY

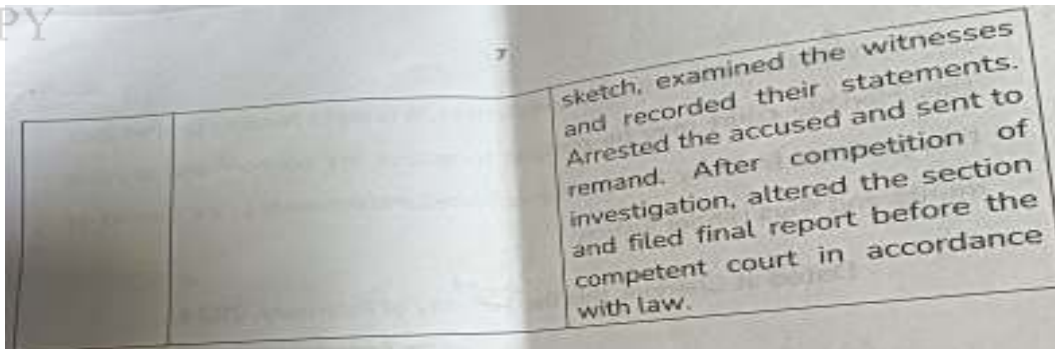
P.W.15	Tr.Prabu	[Ex.P.5] Attested in Rough Sketch [Ex.P.20]
P.W.16	Tr.Muthusami	Attested in Observation mahazar [Ex.P.6]
P.W.17	Tr.Karunanithi	Attested in confession statement [Ex.P.7]
P.W.18	Tr.Annamalai	Attested in confession statement [Ex.P.8]
P.W.19	Tmt.Thenmozhi-WHC 171	Deposed that she handover the victim to the Government Hospital, Kallakurichi for medical examination.
P.W.20	Tmt.Savitha-WPC 2466	She was issued CSR.No.177/2021.
P.W.21	Tr.Vijaya Prabakaran	Issued community certificate to the complainant and accused.
P.W.22	Dr.Shanmugasapriya	Issued Medical report [Ex.P.11]
P.W.23	Dr.J.Ramkumar	Issued Medical report [Ex.P.12]
P.W.24	Tr.Jeyakumar	Issued G5 B certificate
P.W.25	Tr.Subramaniam-SSI	Deposed that she handover the accused to the Government Hospital, Kallakurichi for medical examination.
P.W.26	Tmt.Bhuvaneshwari, Inspector of Police	Deposed that received complaint from P.W.1, based on that, a case was registered in Crime No.15 of 2021, U/s.417, 376 IPC & 3(1)(r), 3(1)(s) SC/ST (PoA) Act, 2015 and submit the same before the P.W.27 for investigation.
P.W.27	Tmt.Rajalakshmi, Deputy Superintendent of Police	She took up the case for investigation, went to place of occurrence, prepared observation mahazar and rough

20-11-2023
Dy. Supdt. of Police,
Kallakurichi Sub. Division



Crl.M.P.No.15667 of 2023
in Crl.A.No.1060 of 2023

WEB COPY



9. It is submitted that after conclusion of due trial, the trial court by its judgment in S.C.No.49 of 2021, dated : 25.08.2023, on the file of the Sessions Judge, Special Court for Exclusive Trial of Cases Registered under the SC and ST (PoA) Act, 1989, Villupuram and convict the Appellant/Accused-1 and sentenced him as follows:

U/s.417 IPC	Sentenced him to undergo S.I for 1 year and imposed fine of Rs.50,000/- i/d. To undergo S.I. For 3 months.
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7.Mr.M.Suresh Sankar, learned Legal Aid Counsel appearing for the third respondent/de-facto complainant submitted that the de-facto complainant had been exploited by the petitioner for his lust and she had been used for almost 8 years and finally desisted for the reason that de-facto complainant belongs to SC community. Though the petitioner was aware about the social status of the de-facto complainant from the school days, he



*Crl.M.P.No.15667 of 2023
in Crl.A.No.1060 of 2023*

had shown interest and promised to marry her. Right from the first instance each time the petitioner gave promise that he would marry her. Believing the words she had given herself to the petitioner, who had finally cheated the de-facto complainant. Except for the social inequality between them, there is nothing else for the petitioner to reject the de-facto complainant. Further submitted that earlier on 20.06.2021, a complaint was lodged and CSR No.177 of 2021 assigned. The petitioner was called for enquiry. On his promise that he would marry the de-facto complainant, the complaint not further pursued. At that time the de-facto complainant considering the love affair and also undertaking of the petitioner to marry her, not pursued the complaint. The petitioner changed his colour once he got employment in the Army and thereafter completely started to neglect the de-facto complainant. Thereafter second complaint was lodged on 06.07.2021 after coming to know about the marriage arrangement of the petitioner on 05.07.2021. Then also the de-facto complainant considering the petitioner's future life in Army and his welfare not taken any forcible action. Only after the petitioner was to marry another lady, she pursued with the complaint. The petitioner right from the initial days had no intention to marry the de-facto complainant, thereby committed the offence of cheating and rape. He further submitted that now



the de-facto complainant is married and living with another person.

8.Considering the submissions made and on perusal of the materials available on record, it is seen that the petitioner and de-facto complainant right from their school days developed friendship and they had close relationship. Further, the de-facto complainant, who is a major, well educated and knowing well about the happenings and its consequences, had continued the relationship with the petitioner for almost 8 years without any opposition. Further it is now submitted that the de-facto complainant got married and settled with her family. The petitioner is also got married and having his own family. Further, the sentence imposed on the petitioner already suspended by the trial Court. Further taking note of the fact that there are arguable points involved in this appeal and it would take some time for the appeal to be taken up for final hearing, this Court is inclined to suspend the sentence imposed on the petitioner.

9.Accordingly, the relief of suspension of sentence and bail are granted to the petitioner on the following conditions till the disposal of the above Criminal Appeal:



*Crl.M.P.No.15667 of 2023
in Crl.A.No.1060 of 2023*

(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 Trial Court.

(b) The petitioner/A1 and the sureties shall affix their photographs and Left Thumb Impressions in the surety bonds and the learned 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 their absence as directed by the Trial Court.

10. Accordingly, this Criminal Miscellaneous Petition is ordered.



*Crl.M.P.No.15667 of 2023
in Crl.A.No.1060 of 2023*

WEB COPY

11. This Court appreciates the thorough preparation and submission made by the Legal Aid Counsel for the third respondent/de-facto complainant.

22.02.2024
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To

- 1.The Deputy Superintendent of Police,
Kallakurichi Sub Division,
Kallakurichi,
Kallakurichi District.
- 2.The Inspector of Police,
All Women Police Station,
Kallakurichi,
Kallakurichi District.
- 3.The Sessions Judge,
Special Court for Exclusive Trial of Cases Registered
under the Scheduled Castes and Scheduled Tribes
(Prevention of Atrocities) Act, Villupuram.
- 4.The Public Prosecutor,
High Court, Madras.



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*Crl.M.P.No.15667 of 2023
in Crl.A.No.1060 of 2023*

M. NIRMAL KUMAR, J.

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**Crl.M.P.No.15667 of 2023
in Crl.A.No.1060 of 2023**

**22.02.2024
(2/2)**