



Crl.M.P.No.18112 of 2023 in Crl.A.No.1059 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.01.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

Crl.M.P.No.18112 of 2023
in Crl.A.No.1059 of 2023

Ramkumar,
S/o.Mani.

... Petitioner

Vs.

State by its,
INSPECTOR OF POLICE,
All Women Police Station,
Kanchipuram,
Kanchipuram District.
(Crime No.9 of 2017).

... Respondent

PRAYER: Criminal Miscellaneous Petition has been filed under Section 389(1) of Cr.P.C., to suspend the sentence imposed upon the petitioner/appellant by the Sessions Judge, Mahila Court, Chengalpet in S.C.(K)No.58/2018 by judgment dated 12.09.2023 and enlarge the petitioner on bail pending disposal of the appeal.

For Petitioner : Mr.K.G.Senthil Kumar
For Respondent : Mr.C.E.Pratap,
Government Advocate (Crl. Side)

ORDER

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the judgment, dated 12.09.2023 in S.C.(K)No.58 of



2018 by the learned Sessions Judge, Magalir Neethimandram, Chengalpet (trial Court) and enlarge him on bail pending disposal of the main appeal.

2.The petitioner was convicted by the trial Court for offence under Section 376 of IPC and sentenced to undergo Rigorous Imprisonment for seven years and to pay a fine of Rs.5,000/-, in default to undergo three months Simple Imprisonment. Similarly, the petitioner was also convicted for offence under Section 417 of IPC and sentenced to undergo one year Rigorous Imprisonment and to pay a fine of Rs.1,000/-, in default to undergo one month Simple Imprisonment. Challenging the conviction and sentence of the trial Court, the petitioner preferred an appeal and the present Suspension of Sentence.

3.The gist of the case is that the victim girl (PW1) studied up to 12th std and she used to visit her brother in his house often at Thenneri village, Kancheepuram district. The petitioner who hails from Poosivakkam colony had come in contact with the victim girl. During initial period, it was only a casual conversation, thereafter, the petitioner expressed his serious love



towards the victim girl. Believing the same, the victim girl also developed love relationship with the petitioner from the year 2013. Whenever the victim girl family members were searching for bridegrooms for her, the petitioner used to go there and inform about his interest in marrying her and also spoil all proposals. The petitioner and the victim girl had physical relationship with each other on several occasions. The victim girl insisted the petitioner to get her married, at that time, the petitioner informed that he is constructing a small house in his village and after completion of the same, he will definitely marry her. In the meanwhile, the victim girl became pregnant and on the compulsion and force, the pregnancy was aborted. When the victim girl insisted for the marriage, the petitioner threatened that he would expose the relationship to everyone in the village. Thereafter, the victim girl called the village elders and complained about the petitioner and finally, the petitioner not married the victim girl. Hence, a complaint (Ex.P1) lodged and a case in Crime No.9 of 2017 (Ex.P7) came to be registered on 28.09.2017 for offence under Sections 417, 376 & 506(i) of IPC. On completion of investigation, charge sheet filed before the trial Court.



4.During trial, on the side of the prosecution, thirteen witnesses examined as PW1 to PW13 and nine documents marked as Exs.P1 to P9.

On the side of the defence, no witness examined and no document marked.

On conclusion of trial, the trial Court convicted the petitioner as stated above.

5.The learned counsel for the petitioner submitted that the admitted case of the prosecution is the victim girl is aged about 30 years and the petitioner is aged about 31 years. Both of them known to each other for quite sometime and they were having love relationship between them from the year 2011. On 22.05.2013, the petitioner is said to have called the victim girl and took her to isolated place near the lake area and had physical relationship. Thereafter, they were often met together and continued their physical relationship. In the year 2015, the victim girl became pregnant. PW3, the sister in law of the victim girl took her to the hospital where the Doctor informed the victim girl that she was pregnant for forty five days. There was no opposition from the victim girl or from her family members with regard to pregnancy. In the year 2017, a complaint (Ex.P1) lodged. In



view of the above, no offence under Section 376 of IPC, is made out.

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6.He further submitted that the promise of marriage is spoken to by the victim girl alone. Neither PW2 and PW3, the brother and sister-in-law or any of the family members or villager have stated about the promise, marriage proposal of the victim girl was being thwarted by the petitioner. In view of the same, the offence under Section 417 of IPC would not get attracted. He further submitted that the evidence of the victim girl does not inspire confidence and it is with contradictions. As regards usage of touch phone, capturing picture, using the same threatening the victim girl, PW13, the Investigating Officer admits that neither in the complaint nor in the 164 Cr.P.C., statement, PW1 does not disclose the same and only in the evidence, such statement made. In this case, no mobile phone or any call detail records collected to show that the petitioner and the victim girl were in constant touch and exchanged photos. PW10 is the Doctor examined the victim girl and issued the Accident Register (Ex.P5) and stated that there was no injury or any marks on the victim girl confirming that there was any forcible relationship. In Ex.P5, it is clearly recorded that the victim girl had



given a consent for physical relationship. PW1 clearly stated that she gave hand written complaint, but the complaint (Ex.P1) is a typed one. Hence, the complaint is a concocted which has been prepared with deliberation to implicate the petitioner. Thus, the conviction of the petitioner is not sustainable, hence, prays for suspension of sentence.

7.The learned Government Advocate (Crl. Side) appearing for the respondent Police filed counter and submitted that the victim girl (PW1) lodged the complaint on 06.09.2017 stating that she was aged about 30 years and was working in a private company as an Operator. Whenever her sister-in-law went to her parents home and the defacto complainant was alone in the home, the petitioner came in contact with the victim girl. They were initially talking over mobile phone and from the year 2013, they had developed liking towards each other and had love affair. The victim girl believing the same, gone along with the petitioner in his two wheeler to various places including beach and cinema theatre and other places. On 22.05.2013, the petitioner called the victim girl at night hours to come near lake area where he had forcible physical relationship with the victim girl



despite her opposition. Thereafter, they have constantly physical relationship. In the year 2015, the victim girl became pregnant and the same was forcibly aborted on the promise of the petitioner that he would marry her. Later, by giving one reason or other, the petitioner cheated the victim girl, hence, she lodged the complaint immediately. On her complaint, CSR assigned, enquiry conducted and thereafter, finding the real intention of the petitioner, a case registered. During investigation, the petitioner was arrested, the victim girl was examined and she was produced before the learned Magistrate for recording 164 Cr.P.C., statement and thereafter, she was produced before PW10 Doctor, who examined her and gave the Accident Register (Ex.P5). The victim girl informed the Doctor about she compelled to physical relationship by the petitioner on several occasions. The medical records confirmed that the victim girl hymen not intact and there was possibility of the victim girl being raped. In this case, PW2 and PW3, the brother and sister-in-law of the victim girl confirmed the relationship between the victim girl and the petitioner. PW4 and PW5 are the witnesses to the Observation Mahazar (Ex.P3) and Rough Sketch (Ex.P8). PW6 and PW7 are witnesses for arrest and confession of the



petitioner. PW8 and PW9 are the independent witnesses who corroborated the evidence of PW1. PW10 is the Doctor who examined the victim girl. PW13 is the Investigating Officer who conducted investigation and filed charge sheet before the trial Court. Before the trial Court, on the side of the prosecution, thirteen witnesses examined as PW1 to PW13 and nine documents marked as Exs.P1 to P9. Hence, prays for dismissal.

8.Considering the submissions and on perusal of the materials, it is seen that the petitioner as well as the victim girl are almost similar age i.e., 30 years and above. The relationship between them starts in the year 2011 and thereafter, they had love relationship and later, they have constant touch with each other in mobile phone roaming around various places in public view in the motor bike. In the year 2013, the victim girl and the petitioner had gone to lake area at odd hours where they had physical relationship. Though it has been stated that she resisted the same, her subsequent contact of continuing physical relationship with the petitioner would only confirm the consensus relationship between the petitioner and the victim girl. The victim girl is a aged person of around 30 years who had conscious



relationship with the petitioner both physical and psychological.

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9.In the year 2015, it is claimed that the victim girl got pregnant. PW3 accompanied the victim girl to the hospital on coming to know about the pregnancy. PW3 informed PW2, her husband and brother of PW1. All of them are aware about the pregnancy and abortion of the same. After 2015, the relationship between the petitioner and the victim girl continued and only in the year 2017, the complaint has been lodged. Thus, the petitioner and the victim girl relationship has been given approval by PW2 and PW3. After abortion of pregnancy, PW1 continued physical relationship which has not been seriously opposed by any of her family members. In the year 2017, after the petitioner refusing to marry, a complaint lodged. Thus, the admitted case is that from the year 2011 to 2017, the relationship between the petitioner and the victim girl continued, at that time, in the guise of false promise, the petitioner is said to have committed rape on the victim girl. In view of the above, the conviction of the trial Court needs reassessment.



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10. In view of the above, the Substantive Sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and the petitioner 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.

11. The petitioner shall appear before the Trial Court on the first working day of once in three months at 10.30 a.m., 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. Accordingly, this Miscellaneous Petition is ordered.

30.01.2024

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Note: Issue order copy on 31.01.2024

To

1. The Sessions Judge,
Magalir Neethimandram, Chengalpet.



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2.The Inspector of Police,
All Women Police Station,
Kanchipuram,
Kanchipuram District.

3.The Superintendent,
Central Prison, Puzhal, Chennai.

4.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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