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Crl.M.P.No.17677 of 2023 in Crl.A.No.871 of 2023

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RESERVED ON : 22.01.2024
PRONOUNCED ON : 24.01.2024

M.NIRMAL KUMAR, J.

This Criminal Miscellaneous Petition has been filed to suspend the sentence imposed on the petitioners/A1 & A2 *vide* judgment, dated 17.07.2023 in Special S.C.No.20 of 2022 by the learned Principal Sessions Judge, Tiruppur (Trial Court).

2.Notice was served to the defacto complainant/victim (PW1) through the respondent Police. Though notice has been received, none appeared for the defacto complainant. Hence, this Court appointed Ms.Malaiyarasi as Legal Aid Counsel for the defacto complainant *vide* order, dated 09.01.2024 to putforth the case on behalf of the defacto complainant.

3.The conviction and sentence imposed against the petitioners by the trial Court are as follows:

- For offence under Sections 306 of IPC and Section 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, the petitioners were ordered to undergo Seven Years Rigorous Imprisonment each and to pay a fine of Rs.1,000/-



each, in default to undergo further Rigorous Imprisonment for three months for each offences.

- For offence under Sections 3(1)(r) & 3(1)(s) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015, the petitioners were ordered to undergo three years Rigorous Imprisonment each and to pay a fine of Rs.1,000/- each, in default to undergo further Rigorous Imprisonment for three months for each offences.

4.Earlier, the petitioners filed suspension of sentence in Crl.M.P.No.12332 of 2023 in Crl.A.No.871 of 2023 and the same was dismissed as withdrawn on 16.08.2023. The present petition for suspension of sentence is the second one.

5.The case of the prosecution is that the deceased Parimala committed suicide due to constant pressure, compulsion and abuse made by the petitioners who are doing money lending business. The deceased was working as temporary sanitary worker in municipality. The deceased and her husband took loan from the 1st petitioner a sum of Rs.27,000/- on weekly interest at exorbitant interest. Initially, the interest was paid regularly for eight weeks, thereafter, the deceased was unable to make the payment due to COVID-19 situation. The deceased and PW1 are having a son and daughter



(PW2) who were studying 7th and 8th std respectively. For the non payment of the interest and principal, the petitioners who are son and mother constantly made harassment for repayment of the entire loan. On 23.05.2022, at about 07.30 a.m., the 1st petitioner/A1 came to the house of the deceased and demanded the money. PW1 informed that within a weeks time, he would make some arrangement for repayment. Thereafter, PW1 called his wife whether she can make any arrangements. The 1st petitioner was present in the house of the deceased till around 09.00 a.m., and forced PW1 to somehow repay the amount. Thereafter, the 1st petitioner took PW1 to Kamaraj Nagar where the deceased was working and again demanded money and in public abused PW1 and the deceased calling their caste name. Then, PW1 had gone for his job and at about 07.00 p.m., both the petitioners came to the house of the deceased and demanded money and again abused the deceased and picked up fight. At that time, the son of the deceased had gone out to play. PW2, the daughter of the deceased was there witnessing the demand and abuse. Thereafter, the deceased asked her daughter (PW2) to go out and locked the door. At about 07.30 p.m., the deceased committed suicide by hanging using her saree.



6.PW4 and PW5 came to the scene, saw the deceased hanging, through the window, removed the tiles, opened the door, brought down the body of the deceased. Thereafter, they called the ambulance, took the body to the Government Hospital, Avinashi where PW9, Doctor examined the deceased and declared brought dead and issued Accident Register (Ex.P12). Thereafter, the defacto complainant/PW1 had gone to the respondent Police Police and lodged the complaint (Ex.P1) to PW17. PW17, the Sub Inspector of Police registered FIR (Ex.P23). PW18, the Deputy Superintendent of Police took up investigation, visited the scene of occurrence, prepared Observation Mahazar (Ex.P3), Rough Sketch (Ex.P24) in presence of witnesses, examined the witnesses present, conducted inquest on the body of the deceased, sent the body for postmortem. PW10, the Postmortem Doctor confirmed the death due to hanging and issued Postmortem Certificate (Ex.P15) and gave opinion (Ex.P17). Thereafter, PW18 collected community certificates of the deceased, her husband/defacto complainant and the petitioners (Exs.P8 to P11). On completion of investigation, charge sheet filed before the trial Court for offence under Sections 3(1)(r), 3(1)(s) & 3(2)(va) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 and Section 306 of IPC and Sections 3 r/w 4 and 9 of the Tamil Nadu Prohibition of Charging Exorbitant Interest Act,



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7.During trial, on the side of the prosecution, eighteen witnesses examined as PW1 to PW18 and thirty one documents marked as Exs.P1 to P31 and two material objects marked as MO1 & MO2. On the side of the defence, no witness examined and no document marked. On completion of trial, the trial Court convicted the petitioner as stated above, but acquitted the petitioners from the charges under the Tamil Nadu Prohibition of Charging Exorbitant Interest Act, 2003.

8.The learned counsel for the petitioners submitted that the petitioners have been falsely implicated in this case, no iota of evidence produced to show that the petitioners had lent money to the deceased and the deceased and PW1 received the amount from the petitioners. In this case, a suicide note (Ex.P19) produced after considerable delay and no explanation given for such delay. Though PW1 and PW2 stated that they were aware about the suicide note (Ex.P19) much earlier, they failed to produce the same before the Investigating Officer. It was only during the evidence of PW2, mention of such suicide note made and thereafter, the suicide note was produced through PW11 and the conviction is based on the suicide note (Ex.P19). Ex.P19 had



not proved in the manner known to law. Hence, the conviction is not sustainable. He further submitted that most of the witnesses are all relatives of the deceased. PW3 is the brother of PW1, PW4 and PW5 are relatives of PW1. In this case, there is no material to show that soon before the death there was any abuse or harassment and the petitioners are the reasons for any abetment.

9.He further submitted that in this case, the arrest and recovery are highly doubtful. The trial Court failed to consider these aspects. The petitioners are in prison from the date of the judgment, hence, prays for suspension of sentence.

10.The learned counsel appearing for the defacto complainant (PW1) submitted that as per Section 8 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989, there is a statutory presumption. In this case, from the evidence of PW1, PW2, PW3 and other witnesses, it is clearly proved the constant harassment, demand of money and also abusing the deceased and her family calling by their caste name in public. In this case, PW1 is a Tailor employed in Baniyan Factory for wages. Due to COVID-19 situation, PW1 was unable to get proper employment. The



deceased is a temporary sanitary worker and she was the only source of income. They had two children and they were facing difficulty in maintaining the family, for which reason they took loan from the petitioners. PW1 clearly stated that earlier on four occasions, they took loan and repaid. Lastly, Rs.27,000/- loan was taken, which could not be repaid. The mode of collection and interest rate would clearly prove that it is an exorbitant interest loan.

11.She further submitted that the petitioners in this case belong to dominant community and exerting pressure using force and also abused the deceased and her family members. The deceased hails from scheduled caste community, working as temporary sanitary worker which is confirmed from the evidence of PW8. The evidence of PW2 is natural. PW2 stated about witnessing the entire abuse and harassment caused to her mother. PW2, a child witness seen her mother's pain, but on the instruction of her mother, she had gone out from the house and thereafter, her mother committed suicide. The suicide note of the deceased was found later, but hailing from marginalized society and fearing that it failure to produce the note immediately, they would be found fault having not informed the Police. When the evidence of PW1 and PW2 recorded in the Court, disclosed about



the suicide note. The trial Court immediately appointed PW11, Advocate Commissioner to visit the house of the deceased, to collect the document and to produce the same. Ex.P19 has been produced on the next day. The examination of PW1 and PW2, disclosure of the fact, thereafter the trial Court immediately appointing the Advocate Commissioner/PW11 and collecting document (Ex.P19), producing on the next day, all contemporarily recorded. Further, the trial Court not placed reliance solely on the suicide note (Ex.P19). The evidence of PW1 to PW4 clearly stated the overtact of the petitioners and the deceased committing suicide. The trial Court on considering the case based on the evidence, had rightly convicted the petitioners.

12.The contention of the learned counsel for the petitioners that A2 was present only on the third occasion and her bail application to be considered. The evidence are clinching proved the petitioners who are son and mother abetted the deceased to commit suicide. Now, PW2 and another son (minors) both lost their mother and a regular earning member of the family, deprived of love and affection and their livelihood. Hence, strongly opposed the suspension of sentence.



13.The learned Additional Public Prosecutor filed his counter stating that PW1, a resident of Kaikatti Puthur, belongs to scheduled caste community and his wife working temporarily as sanitary worker, a daily wager in the municipality. Both belongs to Hindu Arunthathiyar Scheduled Caste Community and the petitioners belong to Kongu Velallar, a Backward Class. A2 was working in Baniyan Factory where PW1 was working and they were known to each other. Two years prior to the occurrence, the deceased borrowed Rs.27,000/- from the petitioners for speed interest and agreed to repay the same Rs.2,700/- for every week. They paid the same for two months regularly and thereafter, mobilized Rs.10,000/- and paid the loan amount. The petitioners not satisfied with the same, demanded PW1 and the deceased to repay Rs.20,000/- in lumpsum. Due to COVID-19, they were unable to have regular earnings, but this was not heeded to by the petitioners. On 23.05.2022, from the morning to evening, continuous harassment and demand for repayment of loan was made. In fact, the 1st petitioner along with PW1 had gone to the work spot of the deceased and there also, the deceased was abused demanding money. This was followed at about 07.30 p.m., in the house of the deceased by the petitioners. Unable to bear the humiliation, sufferings and abuse of caste name, the deceased committed suicide by hanging, which is confirmed by the evidence of PW1 to PW5, Doctors'



evidence (PW9 & PW10) and postmortem certificate (Ex.P15). The respondent Police registered the case, examined the witnesses, collected the documents and filed charge sheet before the trial Court. During trial, the suicide note produced as Ex.P19 and the trial Court appointed an Advocate Commissioner, collected the document (Ex.P19). From the evidence and materials coupled with the suicide note, the trial Court convicted the petitioners as stated above.

14.He further submitted that the trial Court not convicted the petitioner solely on the basis of Ex.P19. Apart from Ex.P19, the evidence of witnesses are clear confirmed that the petitioners are the reason for the abetment of suicide, of the deceased Parimala. The judgment is a well reasoned one and strongly opposed the suspension of the sentence.

15.Considering the submissions and on perusal of the materials, it is seen that in this case, PW1 to PW5 clearly stated about the specific overtact of the petitioners. The judgment of the trial Court is a well reasoned and detailed one. The evidence of PW1 to PW5 and Doctors' evidence (PW9 & PW10) and other witnesses and the attendant circumstances clearly confirmed the petitioners' overtact and reason for the suicide of Parimala by



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hanging.

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16.The points raised by the learned counsel for the petitioners have already raised during trial which the trial Court with reasons rejected the same. At this stage, there is no material for consideration for suspension of sentence. The points raised by the petitioners can be decided during final hearing of the appeal.

17.In view of the above, this Court is not inclined to grant suspension of sentence to the petitioners. Accordingly, this Criminal Miscellaneous Petition stands dismissed.

18.This Court places its appreciation to the young lawyer for her commitment to the case entrusted.

24.01.2024

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PRE-DELIVERY ORDER IN
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24.01.2024