



Crl.M.P.No.19733 of 2023
in Crl.A.No.1613 of 2023

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.03.2024

CORAM:

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

Crl.M.P.No.19733 of 2023

in

Crl.A.No.1613 of 2023

Subash

S/o.Sundharam

... Petitioner/A1

Vs.

State rep by

The Inspector of Police,

All Women Police Station,

Villupuram,

Villupuram District.

(Crime No.32 of 2016)

... Respondent

PRAYER: Criminal Miscellaneous Petition filed under Sections 389(1) and 439 of Cr.P.C to suspend the sentence imposed on petitioner in S.C.No.51 of 2018 by the learned Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court), Villupuram by the judgment dated 24.11.2023 and enlarge the petitioner on bail, pending disposal of the above Criminal Appeal.



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For Petitioner : Mr.S.S.Swaminathan

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

ORDER

This Criminal Miscellaneous Petition has been filed by the petitioner, seeking to suspend the sentence of imprisonment imposed on him in S.C.No.51 of 2018 by a judgment dated 24.11.2023 passed by the learned Sessions Judge, Mahalir Neethi Mandram (Fast Track Mahila Court), Villupuram and enlarge the petitioner on bail pending disposal of the above appeal.

2.The petitioner/A1 in S.C.No.51 of 2018 was convicted by the trial Court by judgment dated 24.11.2023 and sentenced to undergo one year rigorous imprisonment and to pay a fine of Rs.1,000/- for offence under Section 417 IPC and to undergo ten years rigorous imprisonment and to pay a fine of Rs.10,000/- for offence under Section 376 IPC, against which, the



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petitioner preferred an appeal in Crl.A.No.1613 of 2023 before this Court along with suspension of sentence petition.

3.During trial, on the side of the prosecution, PW1 to PW18 examined and marked Exs.P1 to P15. 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 contention of the learned counsel for petitioner is that the petitioner and the victim/LW1 were in love with each other for more than five years. They hail from the same area with similar social background. The victim forced the petitioner to marry her. The petitioner made clear with the victim that his marriage with the victim can be after his sister and elder brother's marriage. Initially the victim girl agreed to the same and continued her love relationship and they became close, had physical relationship for some period. The victim admits relationship was from the year 2012. This



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being so, when she again forced for the marriage and the petitioner was immediately not agreeable to the same, a false complaint was lodged on 28.11.2016 as though the petitioner by misconception had physical relationship with the victim and thereafter refused to marry her. The victim allege on earlier occasion consumed oleander seed for the same reason and thereafter got admitted in the Government Hospital, took treatment as inpatient and at that time, police enquired but what happened thereafter is not known. According to the petitioner, victim's allegation that the victim became pregnant in the year 2015-2016 and she was forced to abort the fetus, by the petitioner by giving her pills are all imaginary stories of the victim. PW5 is the Doctor, who examined the victim girl and gave her opinion/Ex.P5 for the questionnaire of Investigating Officer/Ex.P6 stating that the abortion undergone by the victim could not be determined. Likewise the abortion tablet namely Mifeprin Kit strip is said to have been seized by way of Form-95 by PW7/Investigating Officer. The same not forwarded or produced before the trial Court. He further submitted that PW1 had given an



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exaggerated version. PW2 being the mother of the victim naturally supported the victim/PW1. PW3 half brother of the victim not confirmed the statement of the victim girl in total. Except for these three witnesses and official witnesses all other private witnesses including the relatives of the victim and the villagers and neighbours not supported the case of the prosecution. The trial Court acquitted the petitioner from the charges of offence under Section 313, 294(b) and 115 of IPC and also finding that the case against A3 and A4 are not made out, had acquitted them of the charges. The petitioner ought to have acquitted from the case, on the other hand the trial Court had merely gone on sentiments finding that the victim girl hails from a poverty stricken family and stigmatized, hence morally convicted the petitioner which is not sustainable. Hence, prays for granting suspension of sentence to the petitioner.

5.The learned Government Advocate (Crl. Side) filed his counter and submitted that the case of the prosecution is that the defacto complainant



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by name, Vinothini/victim is residing at Stalin Nagar of Villpuram along with her parents and she was working in a mobile shop and A-1 had been in love with her for the past 5 years and on 13.01.2012 at about 06.00 p.m, while the victim was at her house alone, the accused had come to her house and deceitfully made false promise of marriage and insisted upon her to have sexual intercourse. Subsequently on various days the accused had indulged in such sexual act with false promise of marriage. The victim had become pregnant on two occasions and the accused had given her pills to abort the fetus. Whenever, the victim insisted upon the accused to marry her, he would state that he would marry her after her sister's marriage. However, A-1 failed to do so and when the victim had gone to his house on 02.11.2016, to beseech him to marry her, A-1 along with other accused persons Sundaram [A2], Umaiyal [A3] and Suresh [A4] uttered filthy languages against her and abetted to commit offence. Pursuant thereto, the victim had consumed poison and got admitted in Government Medical College and Hospital and subsequently discharged.



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6.He further submitted that base on the above complaint, a case was registered in Villupuram, All Women Police Station in Crime No.32 of 2016, u/s , 376, 313, 294 (b), 506 (i) of IPC on 28.11.2016 at about 09.00 hours by the then Inspector of Police, who took up the case for investigation, framed charges under Sections 376, 417, 313 IPC against A-1 and Section 294 (b) and 115 IPC against A-1 to A-4. The prosecution has examined P.W.1 to P.W.18 and marked exhibits Ex.P.1 to Ex.P.15 and no material objects marked. On the defence side, no witnesses examined, no exhibits and no material objects marked. It is submitted that after conclusion of trial, the trial court by its judgment in S.C.No.51 of 2018, dated 24.11.2023 on the file of the Sessions Judge, Mahalir Neethi Mandram, (Fast Track Mahila Court), Villupuram convicted the petitioner as stated above. Hence, prays for dismissal of the petition.

7.Considering the submissions made and on perusal of the materials availabel on record it is seen that PW1, who is a major,



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discontinued her studies from 9th standard, working in a mobile show room developed love with the petitioner and they had love affair for more than five years. The first occurrence is said to have taken place in the year 2012 and thereafter they continued their relationship by visiting various places and they stayed together. At that time they had physical relationship. Due to the relationship, in the year 2015-2016, she claims to have taken abortion pills at the instance of the petitioner and thereafter when the petitioner refused to marry her, she had gone to the petitioner's house demanding for marriage. At that time, the petitioner along with his family members abused her and chased her away. Thereafter, a complaint lodged on 28.11.2016. Prior to it, it is stated that she attempted to suicide by consuming oleander seeds. The police visited her in the hospital, recorded her statement, thereafter no action has been taken. PW5/Doctor, Exs.P5 and P6 would clearly prove that there is nothing to show that the victim had undergone abortion during the year 2015-2016. This is despite specific questionnaire addressed by the Investigating Officer. Likewise, PW7/Investigating Officer though states that through



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Form-95 Mifeprin kit strip given to the victim by the petitioner was collected, neither the tablet nor Form 95 produced, before the Court.

8.Added to it, in this case, except PW1, her mother/PW2, her half brother/PW3, the villagers of victim and petitioner, namely, PW4, PW8 to PW15 have not supported the case of the prosecution. From the evidence of PW5/Doctor except for the fact that hymen found intact, nothing against the petitioner is found. PW6 is the Doctor, who issued potency certificate of the petitioner. PW7 is the initial investigating officer and PW18 is the Investigating Officer, who conducted further investigation. From the evidence of these witnesses the trial Court acquitted A3, A4 and the petitioner for offence under Sections 313, 294(b) and 115 of IPC. A2 in this case died during trial. Both the petitioner and the victim hail from the same village with same social status. Economically they might have some differences but that is the only reason for the marriage could not performed. Even when the victim was recalled, she has stated that the bridegroom was



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selected for her and she is not interested to further pursue the case. Since this part of evidence was by way of recall after some time, the trial Court not considered the same, which might not be proper, evidence has to be considered on whole and not in parts. The petitioner is married and is having nine months baby on the date of conviction. It is seen that the victim is a major, had a conscious relationship with the petitioner for more than five to six years. It is the dispute of timely marriage, there was some difference of opinion. Hence, the conviction of the petitioner under Section 376 IPC may not be sustainable. In view of the same, this Court finds that the finding of the Court below needs to be reconsidered. Hence, this Court is inclined to grant suspension of sentence to the petitioner.

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



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(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 Judicial Magistrate No.I, Villupuram.

(b) The petitioner/accused 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 his absence as directed by the Trial Court.



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10. Accordingly, this Criminal Miscellaneous Petition is ordered.

22.03.2024

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To

- 1.The Inspector of Police,
All Women Police Station,
Villupuram,
Villupuram District.
- 2.The Sessions Judge,
Mahalir Neethi Mandram,
(Fast Track Mahila Court),
Villupuram.
- 3.The Judicial Magistrate Court No.I,
Villupuram.
- 4.The Superintendent of Police,
Central Prison,
Cuddalore.
- 5.The Public Prosecutor,
High Court, Madras.



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M. NIRMAL KUMAR, J.

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