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CRL MP No. 10422 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06-08-2026

CORAM

THE HON'BLE MR JUSTICE M. NIRMAL KUMAR

CRL MP No. 10422 of 2026

AND

CRL A NO. 744 OF 2026

V.Karthi
S/o.Velu,
58, Manguttapalayam,
Tiruchengode Taluk,
Namakkal District.

..Petitioner(s)

Vs

The State by
The Inspector of Police,
Tiruchengode Town PS,
Crime No.1206 of 2010
Namakkal District.

..Respondent(s)

CRL A No. 744 of 2026

V.Karthi
S/o.Velu,
58, Manguttapalayam,
Tiruchengode Taluk,
Namakkal District.

..Appellant(s)

Vs

The State by The Inspector of Police,
Tiruchengode Town PS.
Crime NO.1206/2010
Namakkal District.

..Respondent(s)

Prayer: Criminal Miscellaneous Petition filed under Section 389(1) of Cr.P.C., 2023, praying to suspend the sentence of imprisonment imposed in the judgment dated 29.05.2026 in S.C.No.59 of 2018 on the file of the Ld. Sessions



have kidnapped her and taken her to Palani temple. There, he performed a marriage and thereafter took her to Ooty and repeatedly subjected her to sexual intercourse, while she was a minor. The victim's father lodged a complaint and a case in Crime No.1206 of 2010 registered initially for 'Girl Missing' and thereafter altered to Sections 363 and 376(i) of I.P.C. and Section 9 of the Prohibition of Child Marriage Act, 2006. After the victim was secured on 15.10.2010, charge sheet filed in this case in S.C.No.59 of 2018.

3.During trial, on the side of the prosecution, PW1 to PW14 examined, Exs.P1 to P15 marked and M.O.1 produced. On the side of the defence, no witnesses examined and no documents marked. On conclusion of trial, the Trial Court convicted the petitioner as stated above.

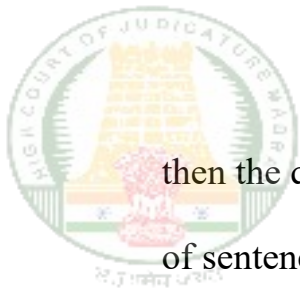
4.The learned counsel for the petitioner submitted that the petitioner and the victim were in love with each other, when the victim was few months short of 18 years. While the victim was studying 12th standard, both the petitioner and victim went to the Palani Temple on 12.10.2010, where the petitioner garlanded her and both exchanged garlands and thereafter both of them left to Ooty and they were staying in Ooty from 11.10.2010 to 15.10.2010. On 15.10.2010, both returned to their native place, Tiruchengode. At that time, the victim was secured and the petitioner arrested. The learned counsel further submitted that from 11.10.2010 to 15.10.2010, both the petitioner and victim were only



travelling together in a bus and no penetrative sexual assault or rape committed as projected by the prosecution.

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5. The learned counsel further submitted that in this case, no witnesses from Ooty examined, to prove where the petitioner and victim, and had any physical relationship. He further submitted that after both of them returned on 15.10.2010, the parents of the petitioner as well as the victim, agreed to their marriage and the marriage was performed on 09.08.2012. Thereafter, they were blessed with a female child on 13.10.2013 and living happily. Subsequently, they had a misunderstanding and there was a matrimonial discord and both of them got separated. The petitioner was very much interested to continue with his matrimonial life. Hence, he filed a petition in H.M.O.P.No.78 of 2014 seeking restitution of conjugal rights, which was decreed in favour of the petitioner. Since the decree was not complied with, the petitioner filed H.M.O.P.No.1 of 2017 seeking divorce, which was granted on 16.08.2018. Till such time, the case was kept in abeyance and nothing progressed. After the divorce was granted, the de facto complainant and the victim pursued the case and the victim was examined as witness/PW3 on 13.10.2018. Finding was that there is no evidence for penetrative sexual assault when the victim was minor, but the Trial Court convicted the petitioner for offence under Sections 363 and 376(i) of I.P.C. He further submitted that once marriage performed between the petitioner and the victim and both living as husband and wife, begotten a child,

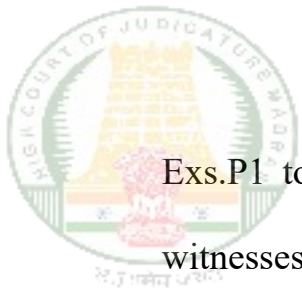


then the question of rape would not arise. Hence, prayed for granting suspension of sentence to the petitioner.

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6. The learned Government Advocate (Criminal Side) strongly opposed the petitioner's contention and submitted that in this case when the victim was aged about 17 years and studying 12th standard, the petitioner abducted her, forcibly taken her to Palani temple, there he forcibly tied a thali and thereafter took the victim to Ooty. From 13.10.2010 to 15.10.2010, they were staying together at Ooty. At that time, the petitioner committed penetrative sexual assault. The victim's father lodged a complaint and a case was initially registered under Girl Missing, later altered to Sections 363 and 376(i) of I.P.C. and Section 9 of the Prohibition of Child Marriage Act, 2006. Thereafter, the victim was secured on 15.10.2010. Later marriage conducted by the family members of the petitioner and victim and their marriage consummated and they were blessed with a female child. Subsequently, the petitioner deserted the victim and filed a petition in H.M.O.P.No.78 of 2014 seeking restitution of conjugal rights and thereafter filed H.M.O.P.No.1 of 2017 seeking divorce and obtained an *ex-parte* decree.

7. He fairly submitted that from the year 2010 to 2018, the crime number was kept pending and in the year 2018, charge sheet filed and thereafter the trial proceeded. He further submitted that during trial PW1 to PW14 examined,



Exs.P1 to P15 marked and M.O.1 produced. On the side of the defence, no witnesses examined and no documents marked. The Trial Court on the evidence of witnesses and materials produced, had rightly convicted the petitioner. Hence, he prayed to dismiss the petition.

8. Considering the submissions made and on perusal of the materials, it is not in dispute that the petitioner and the victim//PW3 had a marriage with the concurrence of both the families and a female child was also born to them. Thereafter, due to some matrimonial discord, they got separated and divorce granted. In view of the same, this Court finds that the conviction of the petitioner may not be sustainable. Finding 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 substantive sentence of Imprisonment imposed on the petitioner is suspended till the disposal of the appeal and he 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.



10. Further, the petitioner shall appear before the Trial Court once in three months on the first working day 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.

11. On breach of any of the aforementioned conditions, the learned Trial Judge is entitled to pass appropriate orders against the petitioner in accordance with law as if the aforementioned conditions are imposed by herself as laid down by the Hon'ble Supreme Court in **P.K.Shaji Vs. State of Kerala** [(2005) 13 SCC 5560].

12. Accordingly, this Criminal Miscellaneous Petition is ordered.

06-08-2026

Index: Yes/No
Speaking/Non-speaking order
Neutral Citation: Yes/No
RSI

Note: Issue order copy on 07.08.2026.



M.NIRMAL KUMAR J.

RSI

To

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- 1.The Sessions Judge,
Mahila Court/Fast Tack Court,
Namakkal.
- 2.The Judicial Magistrate,
Tiruchengode.
- 3.The Inspector of Police,
Tiruchengode Town PS.
Namakkal District.
- 4.The Superintendent of Prison,
Central Prison, Salem.
- 5.The Public Prosecutor,
High Court of Madras.

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