



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Thursday, the Fourteenth day of September Two Thousand Seventeen

PRESENT

The Hon`ble Mr.Justice V.BHARATHIDASAN

CRL MP (MD) No.8442 of 2017
IN
CRL RC (MD) No.726 of 2017

KRISHNAN

... PETITIONER/APPELLANT/SOLE ACCUSED

Vs

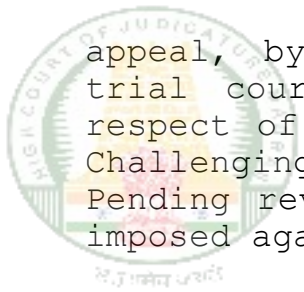
THE STATE REP.BY,
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, THENI,
CRIME NO.23/2007

... RESPONDENT/RESPONDENT/COMPLAINANT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence imposed in S.C.No.71/2008 dated 23/07/2012 by the Learned Assistant Sessions Judge cum Chief Judicial Magistrate, Theni confirmed in Crl.A.No.30/2012 dated 05/06/2017 by the Learned Additional District and Sessions Judge, Theni at Periyakulam and enlarge the petitioner on bail pending disposal of the above Crl.A.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.S.RAVI, Advocate for the petitioner and of MR.C.MAYILVAHANA RAJENDRAN, Additional Public Prosecutor on behalf of the Respondent while admitting Crl RC the court made the following order:-

The petitioner is sole accused in S.C.No.71 of 2008, on the file of the Additional Sessions Court, Chief Judicial Magistrate, Theni. The petitioner stood charged for an offence punishable under Sections 451, 376, 417 and 506(ii) I.P.C. The trial court convicted the petitioner for an offence under Section 451 I.P.C. and sentenced to undergo two years rigorous imprisonment and imposed a fine of Rs.5,000/-, in default to undergo six months rigorous imprisonment and also sentenced to undergo three years rigorous imprisonment and imposed a fine of Rs.5,000/-, in default to undergo six months rigorous imprisonment for an offence under Section 506(ii) I.P.C and seven years rigorous imprisonment and imposed a fine of Rs.5,000/-, in default to undergo one year rigorous imprisonment for an offence under Section 376 I.P.C and also sentenced to undergo one year rigorous imprisonment for an offence under Section 417 I.P.C. Challenging the same, the petitioner preferred an appeal in Crl.A.No.30 of 2012 on the file of the Additional District and Sessions Judge, Theni. The lower appellate court partly allowed the



appeal, by confirming the conviction and sentence passed by the trial court under Section 376 I.P.C and allowed the appeal in respect of the offences under Sections 451, 506(ii) and 417 I.P.C. Challenging the same, the petitioner has filed the present revision. Pending revision, in order to suspend the conviction and sentence, imposed against the petitioner, the present petition has been filed.

2. I have heard Mr.S.Ravi, the learned Counsel appearing for the petitioner and Mr.C.Mayilvahana Rajendran, learned Additional Public Prosecutor appearing for the respondent and perused the records carefully.

3.The learned counsel appearing for the petitioner submitted that the court below, after coming to a conclusion that it is a consensual sex, convicted the petitioner on the ground that the victim girl was a minor at the time of occurrence and the lower appellate court also acquitted the petitioner from all the charges. except for an offence under Section 376 I.P.C. Except the report of the Radiologist, there is no other material available on record to show that the victim is aged below 16 years. Even the Radiologist's report (Ex.P.4) shows that at the time of occurrence, the victim is more than 16 years and less than 18 years. It is a settled law that the Radiologist's report is not a conclusive evidence for age and there is a likelihood of variations in it and even in these kind of cases, two years margin should be given for the age. In the above circumstances, the court below wrongly convicted the petitioner under Section 376 I.P.C

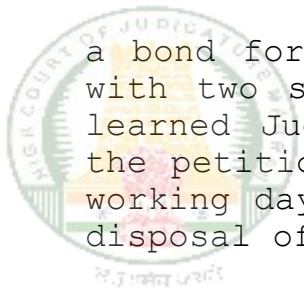
4.The learned Additional Public Prosecutor appearing for the respondent submitted that the Radiologist's report clearly shows that the age of the victim is above 16 years and less than 18 years. Considering the age of the victim, at the time of occurrence, i.e below 16 years, the courts below have concurrently held that the victim is a minor and thus, he opposed the application granting suspension of sentence.

5.I have considered the rival submissions and the materials available on record.

6.In the instant case, to prove the age of the minor girl, the prosecution relied upon the Radiologist report. From the perusal of the radiologist report, it is stated that the age of the victim is more than 16 years and less than 18 years. In the said circumstances, the court below considered the victim as minor and convicted the appellant. In the above circumstances, there is a prima facie case to grant suspension of sentence.

7.Further, since there are some arguable points involved in the revision and it may take long time for taking up the revision for hearing, I am inclined to suspend the sentence of imprisonment alone imposed against the petitioner.

8.In fine, this petition is allowed and the substantive sentence of imprisonment imposed on the petitioner alone is suspended and the petitioner shall be released on bail on executing



a bond for a sum of Rs.10,000/- (Rupees ten thousand only) along with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Theni, with a further condition that the petitioner shall report before the committal Court on the first working day of every English Calender month at 10.30 a.m., till the disposal of the revision or until further orders.

sd/-
14/09/2017

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE ASSISTANT SESSIONS JUDGE CUM CHIEF JUDICIAL MAGISTRATE, THENI
 - 2 THE ADDITIONAL DISTRICT AND SESSIONS JUDGE, THENI AT PERIYAKULAM
 - 3 THE JUDICIAL MAGISTRATE, THENI.
 - 4 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE, THENI DISTRICT.
 - 5 THE SUPERINTENDENT, CENTRAL PRISON, MADURAI.
 - 6 THE INSPECTOR OF POLICE ALL WOMEN POLICE STATION, THENI.
 - 7 THE ADDITIONAL PUBLIC PROSECUTOR, MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- +1. C.C. to M/S.S.RAVI Advocate SR.No.30713

ORDER
IN
CRL MP (MD) No.8442 of 2017
IN
CRL RC (MD) No.726 of 2017
Date :14/09/2017

MKV-PM-PN-SAR 3/18.09.2017/3P-9C