

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Seventh day of September Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION No.10043 of 2018

IN CRL A.442/2018

SURESH

[PETITIONER]

vs

STATE REP BY

[RESPONDENT]

THE INSPECTOR OF POLICE,
W.15, ALL WOMEN POLICE STATION,
ROYAPURAM, CHENNAI-600 013.
CR.NO.663 OF 2016.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.442/2018 on the file of the High Court, the High Court will be pleased to suspend the sentence passed in 310/2007 on the file of Special Court for Cases under POSCO Act 2012/Mahila Court, Chennai-600 104 dated 13.07.2018 and enlarge the petitioner on bail pending disposal of the above C.A.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.442/2018 on the file of the High Court and upon hearing the arguments of M/S.K.SELVAKUMARASWAMI Advocate for the petitioner and of MR.KRITIKAKAMAL.P Government Advocate on behalf of the Respondent the court made the following order:-

The learned Special Court for Cases under POSCO Act, 2012, Mahila Court, Chennai has laid conviction against the petitioner under Section 366 IPC and Section 4 of POSCO Act, 2012 and sentence him to undergo 7 years RI and to pay a fine of Rs.10,000/- in default to undergo 6 months RI for the offence under Section 366 IPC and to undergo 7 years RI and to pay a fine of Rs.10,000/- in default to undergo 6 months RI for the offence under Section 4 of the POSCO Act in S.C.No.310 of 2007 dated 13.07.2018.

2. Aggrieved by the judgment of conviction and sentence, the petitioner has preferred an appeal in Crl.A.No.442 of 2018 before this Court. Pending appeal, this petition is filed by the petitioner seeking suspension of sentence.

3. The learned counsel appearing for the petitioner contended that the accused is working as a Driver, where the father of the victim girl is working as Watchman. The evidence of the victim girl (PW-6) does not inspire the confidence of the Court as the same is

bristles with infirmity regarding the alleged sexual act said to have been committed by the accused on her on three days. The learned counsel for the petitioner has drawn our attention that various answers have been elucidated during the cross examination of PW-6 and the Investigating Officer. According to the learned counsel for the petitioner, the age of the victim girl was not proved in the manner known to law.

4. Per contra, the learned Government Advocate (crl.side) has drawn the attention of the court that the evidence of PW-6 both in the witness box as well as statement under Section 164 Cr.P.C., before the learned Judicial Magistrate are corroborative with each other and medical evidence is supported to the case of the prosecution and age has also been proved in the manner known to law and strongly opposed for granting suspension of sentence to the petitioner.

5. The case of the prosecution is that one Durga Prasath Sharma is the complainant. His daughter, who is the victim girl in this case is aged about 15 years. On 04.07.2016 at about 04.00 p.m., the accused has influenced and enticed the victim girl by telling that he would marry her and kidnapped her to Tiruvanmiyur. On the next day, the accused took her to Andhra State and stayed in a Hotel room, opposite to Kasmur Dharga and committed penetrative sexual assault on her. After investigation, the Inspector of Police, W15 All Women Police Station, Royapuram, Chennai has filed a charge sheet against the accused for the offences under Section 366 IPC and Section 4 of the Protection of Children from Sexual Offences Act, 2012.

6. To prove the charges, the prosecution has examined the witnesses as PW-1 to PW-10 and marked the documents as Exs.P1 to P11 and no material object was marked. On the side of the defence, no witness and document was marked. After perusing the evidence of PW-6 (victim girl) and her statement given to the Judicial Magistrate under Section 164 Cr.P.C., (Ex.P9) and also taking note of the medical evidence of PW-4 (Dr.Gomathi), who had issued Accident Register (Ex.P3); Report of investigation of Sexual Offences in respect of the victim girl (Ex.P4); certificate of examination of Sexual Offences in respect of victim girl (Ex.P5), the trial Court has given a finding that since the accused has moved the custody of the minor girl from the legal guardian (PW-1), the petitioner was convicted under Section 366 IPC and the victim girl was subjected to penetrative sexual intercourse on all three days viz., 05.07.2016 to 07.07.2016 and the accused was convicted under Section 4 of the POCSO Act. Further, from a perusal of the prosecution document Ex.P2-Bona fide Certificate issued by the Higher Secondary School authorities in respect of the victim girl, it is seen that the trial Court has given a finding that the victim girl is a child. Within the definition of the child as defined under POCSO Act, 2012 I am not inclined to grant suspension of sentence for the present.

7. Accordingly, this petition seeking suspension of sentence, is dismissed for the present. However, the petitioner/accused is at liberty to move the Court at a later point of time.

-sd/-
07/09/2018

This order, on being produced, be punctually observed and carried into execution by all concerned

TRUE COPY

Sub-Assistant Registrar (Statistics/C.S.)
High Court, Madras - 600 104.

TO

1 THE SPECIAL COURT FOR CASES
UNDER POSCO ACT 2012/MAHILA COURT,
CHENNAI-600 104

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE SUPERINTENDENT,
CENTRAL PRISON, PUZHAI, CHENNAI

4 THE INSPECTOR OF POLICE,
W.15, ALL WOMEN POLICE STATION,
ROYAPURAM, CHENNAI-600 013.

C.C. to M/S.K.SELVAKUMARASWAMI Advocate on payment of necessary charges SR.NO.

सत्यमेव जयते
Order

in
CRL MP.10043/2018
in
CRL A.442/2018

Date :07/09/2018

From 7.2.2001 the Registry is issuing certified
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RD 24/09/2018