

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Friday, the Twenty Second day of June Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION No.11350 of 2017

IN CRL A.573/2017

JAYAPRAKASH

[PETITIONER / APPELLANT]

Vs

THE STATE OF TAMIL NADU,
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
THUDIYALUR,
COIMBATORE DISTRICT
CR.NO.14 OF 2015.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.573/2017 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the Petitioner/Appellant by the judgment dated 14.07.2017, passed in Special C.C.No.30/2015 on the file of the Learned Sessions Judge, Magalir Neethimandram (Mahila Court), Coimbatore, and enlarge the petitioner on bail, pending disposal of the above CRL A.573/2017 before this Hon'ble Court.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.573/2017 on the file of the High Court and upon hearing the arguments of M/S.E.J.AYYAPPAN, Advocate for the petitioner and of MR. R.SURYA PRAKASH, Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

The petitioner was convicted by the learned Sessions Judge, Magalir Neethimandram, (Mahila Court), Coimbatore, for the offences under Sections 3(a) r/w. 5 (j) (ii), (1) r/w. 6 of Protection of Children from Sexual Offences Act, 2012, (POCSO Act) and sentenced to undergo twelve years rigorous imprisonment and to pay a fine of Rs.5,000/- in default, to undergo six months simple imprisonment in Special C.C.No.30 of 2015, by order dated 14.07.2017.

2. The case of the prosecution is that the witness Kanagaraj is the husband of witness Amutha and they have two daughters and their younger daughter 'X' is aged about 16 years and she is residing along with her parents at Vattamalaipalayam and the petitioner/accused namely Jayaprakash is neighbour and while the victim was studying second year in B.Com (C.A) in R.V. Arts & Science College in the year 2014, the victim and the accused fallen

in love with each other for about five years prior to the complaint and the accused has promised to marry her after getting divorce from his first wife and had physical relationship with her by compulsion and against the wish of the victim, made her pregnant and refused to marry her and hence, the victim filed the complaint. Subsequently, she delivered a male child.

3. After trial, the Sessions Judge, Magalir Neethimandram, Coimbatore has convicted and sentenced the petitioner/accused as stated supra. Now, the petitioner/accused seeks suspension of sentence pending disposal of the appeal.

4. Learned counsel appearing for the petitioner relied upon the decision reported in **1996 Law Weekly (Criminal) 120** and stated that failure to give statement of a person, who is a listed witness and variation with the compulsory compliance of Section 207 of Cr.P.C. not being complied with and hence seeks suspension of sentence.

5. Heard the learned Government Advocate (Crl.Side) appearing for the State.

6. The main ground for seeking suspension of sentence is that the prosecution has failed to prove that on the date of the commission of the crime, the victim is minor. According to the learned counsel for the petitioner, originally, Birth Register was collected. However, during the course of trial, with regard to the dispute in the date of birth, the Court has marked the Birth Certificate of P.W.1 viz., Ex.C.1 on 08.06.2017 and therefore, the learned counsel for the petitioner would contend that it is in violation of provision of Section 207 of Cr.P.C. and hence seeks for suspension of sentence. Further developed his case on the ground that the certificate marked under Ex.C.1 was issued only on 14.04.2018, the date of examination of the witness in the Court and prayed that it is dubious in nature.

7. This Court has given its anxious consideration for the said plea.

8. After going through the records, it is seen that the Birth Certificate of P.W.1 was marked as Ex.C.1 and P.W.1 was summoned and the Birth Certificate issued by the competent authority namely, Coimbatore City Municipal Corporation goes to show that the date of birth of the victim girl is 24.11.1997 and the same was registered as early as on 05.12.1997 and the copy alone has been issued on 14.04.2018 and hence, the contention of the learned counsel for the petitioner that the Birth Certificate was registered only on 14.04.2018 has no legs to stand.

9. The learned Sessions Judge has properly appraised the date of birth of the victim girl as 24.11.1997 and has held that on the date of the alleged commission of the crime, the victim is minor and with regard to the marking of the document, the defence has not disputed the document Ex.C.1 marked through P.W.14 and not even cross-examined on this any score. While that be so, I am not inclined to

accept the contention of the learned counsel for the petitioner, who relies upon the above citation for non-furnishing of the copy at the stage of the committal proceedings. Admittedly, in the instant case, it is the Court witness and marked as a Court documents.

10. Taking into consideration the evidence both oral and documentary, the trial Court has come to the conclusion that the accused committed the offence and awarded the sentence as stated above.

11. The question of reliability of DNA test with regard to the document Ex.P.5 report wherein the accused is stated to be the biological father, DNA test is scientifically correct as approved by the Hon'ble Supreme Court and further, the questions of consensual sex immaterial, when the victim was minor and acquisition against the accused has been under the POSCO Act and hence, I am not inclined to grant suspension of sentence and hence, this miscellaneous petition, seeking suspension of sentence, is dismissed. However, the petitioner/accused is at liberty to move the Court at the later point of time.

-sd/-
22/06/2018

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 SESSIONS JUDGE,
MAGALIR NEETHIMANDRAM, [MAHILA COURT]
COIMBATORE.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
THUDIYALUR, COIMBATORE DISTRICT.

C.C. to M/S.E.J.AYYAPPAN Advocate on payment of necessary charges

Order

in
CRL MP.11350/2017

in
CRL A.573/2017

Date :22/06/2018

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MK:27/06/2018