

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Fifth day of September Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION No.15726 of 2017

IN CRL A.780/2017

SENTHIL KUMAR,

[PETITIONER / ACCUSED]

Vs

STATE REP.BY

[RESPONDENT/COMPLAINANT]

THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION (WEST),
COIMBATORE CITY.

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to suspend the sentence imposed by the Mahila Court, Coimbatore in S.C.C.No.32 of 2015 dated 25.07.2017 and enlarge him on bail pending disposal of the CRL.A.NO.780/2017.

Order : This petition coming on for orders upon perusing the petition and the filed in support thereof and upon hearing the arguments of M/S.A.ABDUL RAHMAN, Advocate for the petitioner and of MR. V.SARATHA DEVI, Govt. Advocate (Crl. Side), on behalf of the Respondents the court made the following order:-

This petitioner/appellant was convicted by the trial Court for the offence under Section 366 of IPC and 3(a) read with 4 of Protection of Children from Sexual Offences Act, 2012 (in short POCSO) and for the offence under Section 366 of IPC he was sentenced to undergo five years rigorous imprisonment with fine amount of Rs.3,000/-, in default to undergo three months simple imprisonment. Further, he was sentenced to undergo ten years rigorous imprisonment with fine of Rs.3,000/- in default to undergo three months simple imprisonment for the offence under Section 3(a) r/w 4 of POCSO,Act. Both the sentences were however, ordered to run concurrently. Challenging the said conviction and sentence, pending appeal, the petitioner has filed the present petition.

2. The learned counsel for the appellant contended that the age of the victim was not proved in a manner known to law. The learned counsel for the appellant further submits that the victim, on her own, came out of her house, went to Palani, where the accused tied *thali* and got married and thereafter returned to the sister's house of the appellant and stayed there. The trial court failed to consider that the victim girl had sexual intercourse with the appellant with her consent and also gave a confession statement regarding the same. While so, the allegation that the accused induced the victim girl to come out of the house is false and untrue and therefore, Section 366 of IPC is not made out. According to the counsel for the appellant, the victim girl and the accused were in love affairs. Further, PW12, Headmaster issued Transfer Certificate of PW2 in which her date of birth was mentioned as 08.09.1999. The trial Court has also failed to consider the fact that the factum of marriage between PW2/victim and the accused were also informed by the victim herself to her mother. While so, the entire case of the prosecution is vitiated.

3. The learned Government Advocate would contend that the prosecution produced Ex.P9, issued by PW12, to show the age of the victim girl, which would go to show that the victim/PW2 was a minor. Further, the prosecution also clearly brought out the guilt of the accused by examining prosecution witnesses along with production of the documentary evidence. In any event, when admittedly the victim girl was a minor, her consent for sexual intercourse is immaterial. The trial Court, considering the above evidence has rightly convicted the appellant.

4. Having regard to the submission of the counsel for both sides, particularly with reference to the fact that the victim girl was minor at the time of the occurrence, which is also supported by medical evidence, this Court is of the view that the correctness or otherwise of the Judgment of the trial Court has to be gone into by this Court only at the time of final disposal of the Criminal Revision Case. Accordingly, this petition is dismissed with liberty to renew the claim of the petitioner for suspending the substantial portion of the sentence in future.

-sd/-

05/09/2018

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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 MAHILA COURT,
COIMBATORE.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION (WEST),
COIMBATORE CITY.

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

C.C. to M/S.A.ABDUL RAHMAN Advocate on payment of necessary
charges

Order

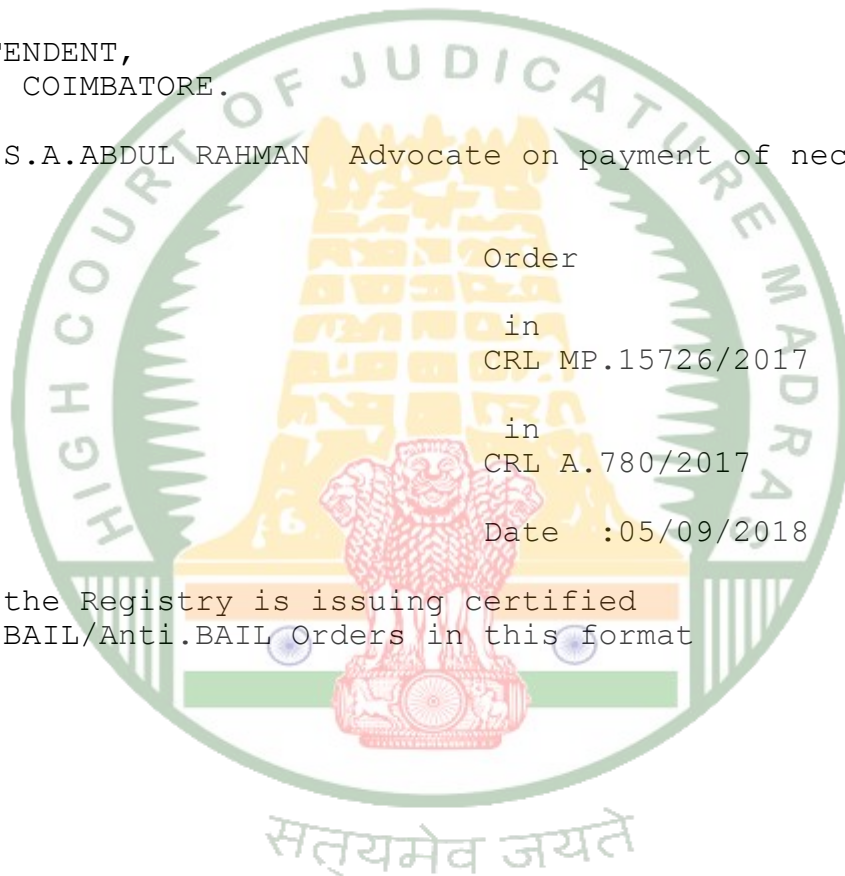
in
CRL MP.15726/2017

in
CRL A.780/2017

Date :05/09/2018

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