

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Twenty Seventh day of June Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION No.7515 of 2018

IN CRL A.323/2018

S.SIVANESAN

[PETITIONER]

Vs

STATE REP.BY

[RESPONDENT]

INSPECTOR OF POLICE,
THIRUNALLAR POLICE STATION,
KARAIKAL. CR.NO.102 OF 2016.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL A.323/2018 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 25.04.2018 made in Spl.S.C.No.4 of 2017 passed by the learned Sessions Judge at Karaikal and enlarge the petitioner/appellant on bail till the disposal of the Criminal Appeal NO.323/2018.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL A.323/2018 on the file of the High Court and upon hearing the arguments of MR.P.PALANI NATHAN, Advocate for the petitioner and of MR.BHARATHA CHAKRAVARTHY, PUBLIC PROSECUTOR, PUDUCHERRY on behalf of the Respondent the court made the following order:-

The petitioner/accused who is a teacher is handling children, his duty is not only to impart education, coupled with education, he should also preach moral and ethic principles to them. Teacher should be a role-model to the students.

2. The petitioner/appellant seeks suspension of sentence.

3. The petitioner/accused is found guilty and convicted for the offence under Section 6 of the POCSO Act and sentenced to undergo R.I for ten years and also to pay a fine of Rs.5,000/-

4. The case of the prosecution is that on 04.08.2016 at 15.45 hrs, in the class room for the Standard VI of Government Middle School, Surakudy, Thirunallar, the accused person being the Science Teacher for the VI standard students at the said School, had, knowing the victim to be a child below 18 years, penetrated his

fingers into the private part (Vagina) of the victim child with sexual intention, causing tear injuries and thereby committed aggravated penetrative sexual assault on the victim Kalainaya.

5. After completion of the investigation, the charge sheet was laid against the accused on 30.11.2016 under Section 6 of POCSO Act.

6. The prosecution in order to prove the guilt of the accused person, has cited as many as 17 witnesses and has chosen to examine PW1 to PW14 and Ex.P1 to Ex.P15 were marked and M.O.1 and M.O.2 were marked.

7. The argument of the learned counsel for the petitioner is that it is not possible for pinching with single finger, and so the prosecution case is unbelievable one.

8. The second contention of the learned counsel is that Section 3(b) read with 5(f) of POCSO Act will not arise for consideration on facts of the case and whether the said provisions are applicable or not, will have to be considered at the time of disposal of the appeal and hence, he prayed for suspension of sentence pending appeal.

9. From the evidence of PW1 to PW3, PW7, PW9 and PW11, it seems that they are given cogent, unblemished and corroborating evidence, about the act of the accused.

10. AO2 deposed that the bleeding was not stopped, so she was sent out from the school and again she was admitted in the G.H.Karaikal for the bleeding of blood with the urine. P.W.2 deposed that the doctor who treated her has stated that there was a nail in her private part; so her father PW3 asked her about it, she told that her science teacher has pinched her. She further deposed that the Child Line Member along the Women P.C asked about the occurrence, she narrated to her and the same was written down by her.

11. PW7/the Child Line Member and PW11/the Women P.C deposed about the incident of what narrated by PW1 in her statement that on 4.8.2016 and about the accused who has pinched her private part.

12. The trial Court, after taking into note Section 3(b) of POCSO and also Section 5(f) POCSO Act and on a consideration of the oral and documentary evidence, fixed the age of the victim girl as 11 years at the time of offence and taking note of the fact that in this case, the accused is a teacher and he has committed the offence on his student has correctly laid the conviction under Section 3(b) and 5(f).

13. Considering the entirety of the circumstances and the evidence placed as noted above by P.W.1 to P.W.23, P.W.7, P.W.9 and P.W.11, I am not inclined to grant the relief for the present.

14. In the above view of the matter, this Criminal Miscellaneous Petition is dismissed for the present. The petitioner is at liberty to move the suspension of sentence at a later point of time.

-sd/-
27/06/2018

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,
KARAIKAL.

2 THE INSPECTOR OF POLICE,
THIRUNALLAR POLICE STATION, KARAIKAL.

3 THE OFFICER INCHARGE,
SUB-JAIL, KARAIKAL.

4 THE PUBLIC PROSECUTOR,
PUDUCHERRY.

+1C.C. to M/S.P.PALANI NATHAN Advocate on payment of necessary charges in SR.NO. 11686

+2C.C. to GOVERNMENT PLEADER FOR PUDUCHERRY in SR.NOS.11784, 11733

Order

in
CRL MP.7515/2018

in
CRL A.323/2018

Date :27/06/2018

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MLT-29/06/2018