

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Twenty Fourth day of July Two Thousand Eighteen

PRESENT

The Hon`ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION No.9588 of 2018

IN CRL A.731/2017

A.ANTHONY @ ANTHONYSAMY

[PETITIONER]

Vs

THE INSPECTOR OF POLICE,
MANGALAMEDU POLICE STATION,
PERAMBALUR.
CR.NO.96 OF 2016.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.731/2017 on the file of the High Court, the High Court will be pleased to grant an order of Suspension of the Sentence and bail conviction imposed on the petitioner / Appellant in Spl.S.C.No.21/2017 on the file of the learned Sessions Judge, (Mahila Court) Perambalur dated 30.10.2017 pending disposal of the above Crl.Appeal No.731/2017. [CRL.MP.NO.9588/2018]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.731/2017 on the file of the High Court and upon hearing the arguments of M/S.A.MOHAMED ISMAIL Advocate for the petitioner and of MR.V.SARATHA DEVI Government Advocate[crl.side] on behalf of the Respondent the court made the following order:-

Learned counsel appearing for the petitioner would contend that the petitioner is the first accused in Spl.C.C.No.21 of 2016 and he has been convicted by the learned Sessions Judge (Mahila Court), Perambalur, by judgment dated 30.10.2017 for the offence under Section 5(P) r/w. Section 6 (4 counts) of Protection of Children From Sexual Offences Act, 2012 and sentenced him to undergo ten years rigorous imprisonment for each count, totally 40 years and also to pay a fine amount of Rs.5,000/- on each count, totally Rs.20,000/-, in default to undergo simple imprisonment for a period of three years for each count i.e., 12 years, while the second accused has been acquitted. As against the said conviction and sentence imposed by the trial Court, the present criminal appeal is filed by the first accused and now the petitioner/A.1 seeks to suspend the sentence imposed on him pending disposal of the above criminal appeal.

2. Learned Government Advocate (Crl.Side) would submit that based on the anonymous letter received from the hostel, P.W.1, the President of the Child Welfare Committee, Perambalur, inspected the hostel run by A.2, wherein, A.1/petitioner herein was working as a Warden and at that time, P.W.2, Protection Officer of Child Welfare Committee along with P.W.7 and P.W.8 were present and based upon their statements, original final report has been filed.

3. The case of the prosecution is that a school was running under the name of St. Mary's R.C. Middle School at Eraiyur Village, Veppanthattai Taluk, Perambalur District. The students, who were studying in the said school, were staying at Hemer Students Hostel run by the management of the said school at Eraiyur. The said Hostel has been managed by the Correspondent namely Fr. Sahayaraj/A.2 and Warden namely Anthony @ Anthonysamy/A.1. The students, who were staying in the said Hostel, were subjected to sexual harassment by the petitioner herein/A.1. In this regard, there was an anonymous complaint was sent to the District Child Welfare Committee, headed by one Mohammed Hussain. On the basis of the said complaint, a committee of the said District Child Welfare Committee visited the said Hostel on 01.02.2016 at 2.30 p.m. and enquired about the alleged sexual harassment given by the petitioner. During such enquiry, it has been revealed that 9 students/minor boys gave statement against the said Anthonysamy/petitioner herein as if he has sexually abused them and also subjected them for sexual intercourse. Besides two students also stated that they know about the fact that the petitioner has committed sexual assault on them. The 11 students have given a separate letters to the Child Welfare Committee about the said occurrence. Thereafter, they were produced before the Child Welfare Committee and they were shifted to a Government hospital at Keelapuliyur. On 02.02.2016, the said Mohammed Hussain gave a complaint along with 11 letters of the victim boys before the respondent police and on the basis of the said complaint, a case was registered in Crime No.96 of 2016 against the petitioner and another for alleged offences under Sections 5(P) r/w. Section 6 (9 counts) 7 r/w. 8 (2 counts). After registering the said case and after conducting the investigation, the charge sheet has been laid before the concerned Court.

4. After conducting trial, the trial Court convicted the petitioner by judgment dated 30.10.2017 for the offence under Section 5(P) r/w. Section 6 (4 counts) of Protection of Children From Sexual Offences Act, 2012 and sentenced him to undergo ten years rigorous imprisonment for each count, totally 40 years and also to pay a fine amount of Rs.5,000/- on each count, totally Rs.20,000/-, in default to undergo simple imprisonment for a period of three years for each count i.e., 12 years.

5. After perusing the order, it is seen that the evidence of P.Ws.3, 4, 5 and 6 are supported the case of the prosecution and they have also clearly deposed regarding the act of the first accused on the body of the victim and their evidence also duly corroborated by

the medical evidence P.W.20-Dr.Ashwin Markkas Madhuras and P.W.21-Dr.Chandrasekaran.

6. After going through the prosecution witnesses and as pointed out by the learned Government Advocate, the victim has clearly spoken about the act of the accused and the trial Court, for reasons recorded therein, has laid conviction for the alleged offences as stated supra and awarded punishment. Taking note of the entirety of the facts and circumstances of the case merely because there is a delay in filing the complaint that will not vitiate the prosecution, I am not inclined to grant suspension of sentence to the petitioner for the present.

7. An offence is a crime against the society and it never dies and anybody can set criminal law in motion by filing appropriate complaint before the police, after coming to know about the commission of alleged offence said to have been committed by the petitioner against the victim and after visiting "hostel" and enquiring the victim only, the complaint was lodged. "Child abuse" is morbid and it is prevalent universally. World Health Organisation (WHO) defines "Child Sex Abuse" (CSA) as the involvement of child in sexual activity that he or she does not fully comprehend and is unable to give consent or for which the child is not developmentally prepared or else that violates laws or social taboos of society.

8. In this view of the matter, the above criminal miscellaneous petition filed for suspension of sentence pending appeal is dismissed for the present.

-sd/-
24/07/2018

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
[MAHILA COURT], PERAMBALUR

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

3 THE INSPECTOR OF POLICE,
MANGALAMEDU POLICE STATION,

PERAMBALUR.

4 THE SUPERINTENDENT,
CENTRAL PRISON, TRICHY

+1 C.C. to M/S.A.MOHAMED ISMAIL Advocate on payment of
necessary charges SR.NO. 13987

Order

in
CRL MP.9588/2018

in
CRL A.731/2017

Date :24/07/2018

From 7.2.2001 the Registry is issuing certified
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RD 30/07/2018