

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Tuesday, the Twenty Third day of October Two Thousand Eighteen

PRESENT

The Hon'ble Mr Justice RMT. TEEKAA RAMAN

CRIMINAL MISCELLANEOUS PETITION No.13857 of 2018

IN CRL.A.NO.573 OF 2017

K.JAYAPRAKASH

[PETITIONER]

Vs

THE STATE REPRESENTED BY,
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
THUDIYALUR, COIMBATORE.
CR.NO.14 OF 2015.

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.573 OF 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, Mahila Court, Coimbatore and enlarge the petitioner on bail pending disposal of the CRL.A.NO.573 OF 2017.

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.573 OF 2017 on the file of the High Court and upon hearing the arguments of MR.M.ABDUL RAZACK, Advocate for the petitioner and of M/S.V.SARATHA DEVI, Govt. Advocate (Crl. Side) on behalf of the Respondent the court made the following order:-

The learned counsel appearing for the petitioner / Appellant contended that this is the second application. He would reiterate the point that the Trial Court has wrongly held that on the date of the alleged occurrence to implicate the accused under the provisions of the POCSO Act. Further, there is no evidence regarding the charge as against the accused. Hence, he seeks suspension of sentence.

2. The learned Government Advocate has submitted that regarding the suspension of sentence, a detailed order dated 22.06.2018 was passed by this Court in Crl.MP.No.11350 of 2017 and in the earlier application also the same request was made by the petitioner herein / Appellant and the same was rejected. Furthermore, he contended that the evidence of PW1 is clear and cogent and Ex.P5 is the DNA report and Ex.P8 is the Medical report, which proved the age of the victim girl and PW.14 is a neighbour, has given independent evidence regarding his act and accordingly, he prayed for dismissal.

3. Heard the learned counsel appearing for the petitioner

herein / Appellant and the learned Government Advocate (Crl.Side) appearing for the State.

4. When the earlier bail application was heard before this Court on 22.06.2018 and this Court has passed the following order:

"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.

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.

5. In view of the above, I am not inclined to entertain the present petition filed by the petitioner herein / Appellant as there is no change of circumstance, accordingly, the Criminal Miscellaneous Petition is dismissed.

-sd/-

23/10/2018

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, COIMBATORE.

2 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

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

4 THE SUPERINTENDENT,
CENTRAL PRISON, COIMBATORE.

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

Order

in
CRL MP.13857/2018
IN CRL.A.NO.573 OF 2017

Date :23/10/2018

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