



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

On Saturday, the Twenty Eighth day of April Two Thousand Eighteen

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PRESENT

The Hon`ble Mr.Justice C.T.SELVAM
and
The Hon`ble Mr.Justice A.M.BASHEER AHAMED

CRL MP (MD) No.2150 of 2018
IN
CRL A (MD) No.132 of 2018

SATISHKUMAR @ KATTAPPU

... PETITIONER/APELLANT

Vs

STATE REP. BY
THE INSPECTOR OF POLICE,
AMMAPETTAI POLICE STATION,
THANJAVUR DISTRICT.
(IN CRIME NO.66 OF 2014)

... RESPONDENT/RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to suspend the sentence impugned me in S.S.C.No.14 of 2014 on the file of the Fast Track Mahila Court, Thanjavur for convict U/s.341, 342, 365, Section 6 of POSCO Act r/w. Section 34 of IPC and Section 8 of POSCO Act, Judgment daed 31.05.2017 and pending disposal of the Criminal Appeal.

Order: This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.S.VENKATESAN, Advocate for the petitioner and of Mr.R.ANANDARAJ, Additional Public Prosecutor for the Respondent and the court made the following order:-

[Order of the Court made by **C.T.SELVAM, J.,**]

<https://hcservices.ecourts.gov.in/hcservices/>
Petitioner is arrayed as the fourth accused in S.C.No.14 of 2014, on the file of the learned Sessions Judge, Mahalir Neethimandram [Fast Track Mahila Court], Thanajvur and under



Judgment dated 31.05.2017, he has been convicted and sentenced as follows:

Offence	Sentence
341 IPC	To undergo simple imprisonment for one month and to pay a fine of Rs.500/- in default to undergo simple imprisonment for one week.
342 IPC	To undergo simple imprisonment for one year and to pay a fine of Rs.1,000/-, in default to undergo simple imprisonment for three months.
365 IPC	To undergo rigorous imprisonment for seven years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one year.
Section 6 r/w 34 of the Protection of Children from Sexual Offences Act, 2012.	To undergo rigorous imprisonment for ten years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for one year.
Section 8 of the Protection of Children from Sexual Offences Act, 2012.	To undergo rigorous imprisonment for five years and to pay a fine of Rs.1,000/- in default to undergo simple imprisonment for six months.

Petitioner has come forward with the above miscellaneous petition, seeking relief of suspension of sentence pending appeal.

2. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

3. A Division Bench of this Court, while granting suspension of sentence to accused 1 to 3 and 5/co-accused, under order dated 06.02.2018, in CrI.M.P.(MD).No.665 of 2018 in CrI.A.(MD).No.277 of 2017, has reasoned as follows:-

"2. We have heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the State and we have also perused the records carefully.

3. The main contention raised by the learned counsel for the petitioners is that when the victim has not been cross examined and no opportunity has been given on behalf of the accused to cross examine the victim girl, the trial Court should not have relied upon the



evidence of the victim girl.

4. The learned Additional Public Prosecutor brought to our attention the reasonings given by the trial Judge, while discussing the evidence of the victim girl. In Paragraph No.8.3 of the judgment, the trial Court has mentioned that even though two years have lapsed, no efforts have been taken by the accused to cross examine P.W.2/victim girl. This statement itself is not correct, as it is the duty of the prosecution to produce the victim girl for cross examination. In the same Paragraph, the trial Court has also mentioned that the parents took extra ordinary efforts to find out the whereabouts of P.W.2 and they were not able to trace out P.W.2. The Village Administrative Officer has also given a certificate stating that it is not possible to trace out the victim girl. Under the said circumstances, there is no point in saying that no efforts have been taken by the defence to cross examine P.W.2/victim girl.

5. Needless to point out that POCSO Act is a special Act, which mandates that a child victim should not be called repeatedly to testify in Court. But, unfortunately, in this case, a petition to defer the cross examination of the victim girl has been filed and the Court has allowed the said petition. It will be a different case, if the Court has not allowed the petition to defer the cross examination. Under such circumstances, even though there is no probative, value for the evidence of the witness, when the witness is not cross examined, the trial court should have either waited for the production of P.W.2 or should have discarded the evidence of P.W.2. However, nothing has been done in this case.

6. At this stage, the learned Additional Public Prosecutor would seek permission of this Court to trace out P.W.2 and to produce her for cross examination. If at all P.W.2 is made available, then, this Court will be in a position to take up this case for final hearing and to take additional evidence of P.W.2 before this Court itself or remanding the matter for further examination to the trial Court. Till such time, in the absence of cross examination of the victim girl/P.W., this Court is inclined to grant suspension of sentence until further orders.

7. Accordingly, this petition is disposed of and the substantive sentence of imprisonment imposed on the petitioners alone is suspended until further orders and they are directed to be enlarged on interim bail, on the following conditions:

The petitioners shall execute a bond for a sum of RS.10,000/- (Rupees ten thousand only) each with two sureties each for a like sum to the satisfaction of the



District Munsif cum Judicial Magistrate, Papanasam and on further condition that the petitioners shall report before the concerned Court at 10.30 a.m., on the first working day of every week, until further orders.

4. Concurring with such view, this Court is inclined to grant suspension of sentence to the petitioner/fourth accused.

5. Accordingly, this Miscellaneous Petition is allowed and the substantive sentence of imprisonment alone is suspended in respect of the petitioner/fourth accused and he is directed to be enlarged on bail on condition that he shall execute a bond in a sum of Rs.10,000/- [Rupees ten thousand only] with two sureties each for a like sum to the satisfaction of the learned Judicial Magistrate, Papanasam and on further condition that petitioner shall report before the said Court on the first working day of every English Calendar month at 10.30 a.m. pending appeal.

sd/-
28/04/2018

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Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE FAST TRACK MAHILA JUDGE
THANJAVUR
- 2 THE JUDICIAL MAGISTRATE
PAPANASAM, THANJAVUR DISTRICT
- 3 -do- thro' THE CHIEF JUDICIAL MAGISTRATE
THANJAVUR DISTRICT
- 4 THE DISTRICT MUNSIF CUM JUDICIAL MAGISTRATE,
PAPANASAM, THANJAVUR DISTRICT.
- 5 THE INSPECTOR OF POLICE,
AMMAPETTAI POLICE STATION,
THANJAVUR DISTRICT.
- 6 THE SUPERINTENDENT
CENTRAL PRISON, TRICHY



7 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI

+1..C.C. to M/S.S.VEKATESAN Advocate SR.No.7736

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ORDER

IN

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CRL A (MD) No.132 of 2018

Date :28/04/2018

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SH/CM-VR/GSR:28.04.2018:5p/9c