



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

Friday, the Twenty Third day of March Two Thousand Eighteen

WEB COPY

PRESENT

**The Hon`ble Mr Justice P.N.PRAKASH**

**CRL MP(MD) No.11711 of 2017**

**IN**

**CRL A(MD) No.527 of 2017**

DHEENAN @ VIJAYANARAYANAN

... PETITIONER/APPELLANT

Vs

STATE REP.BY,  
THE INSPECTOR OF POLICE,  
AMMAPETTAI POLICE STATION,  
THANJAVUR DISTRICT.  
(CRIME NO.261/2014)

... 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 of Imprisonment imposed by the Learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur in Spl.S.C.No.28/2014 by the Judgement dated 21/12/2016 and enlarge the petitioner/appellant on bail pending disposal of the above said Crl.A.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.M.KARUNANITHI, Advocate for the petitioner and of M/S.S.BHARATHI, Government Advocate (Crl.Side) on behalf of the Respondent, the court made the following order:-

| Reserved on | Pronounced on |
|-------------|---------------|
| 12.03.2018  | 23.03.2018    |

The petitioner was tried in Spl.S.C.No.28 of 2014 by the learned Sessions Judge, Mahalir Neethimandram (Fast Track Mahila Court), Thanjavur and has been convicted under Section 4 of the Protection of Children from Sexual Offences Act, 2012 and sentenced to undergo 7 years rigorous imprisonment and to pay a fine of Rs.1,000/-, in default, to undergo 3 months simple imprisonment, by judgment dated 21.12.2016.



2.Challenging the conviction and sentence, the petitioner has filed Crl.A.[MD]No.527 of 2017 and has filed the present application for suspension of sentence and bail.

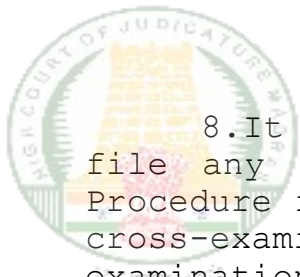
3.It is the case of the prosecution that the petitioner played deceit on a eleven year old girl and made her to come under a bridge, where he sexually abused her. The victim girl has been examined as P.W.2. P.W.2, in her evidence before the Trial Court, had stated that on 11.06.2014, around 04.30 p.m., she returned from school; that she changed her uniform; that the accused, who is the friend of the victim girl's brother, came home and gave her Rs.30/- and asked her to give Rs.20/- to her brother and keep Rs.10/- for herself; that he told her that her brother is calling her; and that believing his words, she accompanied him to the bridge in the outskirts of the Village, where he pushed her on the floor and raped her.

4.Mr.M.Karunanithi, learned counsel appearing for the petitioner submitted that the case requires to be remanded to the Trial Court, since no witness has been cross-examined by the accused. The learned counsel submitted the copies of the deposition, which show that the accused had not cross-examined the witnesses.

5.Mr.M.Karunanithi, learned counsel appearing for the petitioner placed strong reliance on the judgment of a Division Bench of this Court in **M.Kannan vs. State represented by the Inspector of Police, All Women Police Station, Bhavani, Erode District [Crl.A.No.14 of 2017, dated 17.02.2017]**, wherein, this Court has set aside the conviction and sentence imposed on the accused on the ground that there had not been any cross-examination by the counsel.

6.Per contra, the learned Government Advocate (Criminal side) refuted the contentions.

7.On a perusal of the Trial Court judgment, it is seen that the incident had taken place on 11.06.2014, after which, the case was registered and the police had filed the final report in the year 2014 itself. The accused was in custody from 30.06.2014 to 08.07.2015, since he was involved in another case, namely, Crime No.264 of 2014 under Sections 294 (b), 448, 386, 506(ii) of the Indian Penal Code and Section 3(1) of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act. The accused had engaged Mr.D.Kamaraj as counsel to defend him. Therefore, it cannot be stated that the trial proceeded against the accused without proper representation. His counsel must have strategically decided not to cross-examine the witnesses, because, the counsel has advanced serious arguments before the Trial Court by citing various rulings in order to contend that the prosecution has not proved the case beyond doubt. The counsel had not taken the plea that the witnesses were not cross-examined.



8. It is also a fact that the counsel for the accused did not file any application under Section 311 of the Code of Criminal Procedure for recalling the prosecution witnesses for the purpose of cross-examination. Thus, in this case, it is apparent that cross-examination was not done, because, the accused was ill-represented, but, because his counsel has consciously elected not to cross-examine the witnesses as a strategy.

9. The request of Mr. M. Karunanithi, learned counsel for the petitioner for remanding the case for fresh trial on the ground that the victim was not cross-examined cannot be countenanced, in the light of Section 33(5) of the Protection of Children from Sexual Offences Act, 2012.

10. The Judgment relied upon by Mr. Karunanithi, learned counsel appearing for the petitioner relates to a case, where a 23 year old man is said to have kidnapped a 16 year old girl and had impregnated her. The Division Bench has castigated the counsel, who had appeared for the accused and has passed strictures against him at the time of final disposal.

11. In **Suresh Kumar v. State [2016(3) MLJ (Cr1) 513]**, which is a case under Section 302 IPC, a Division Bench of this Court noticed that the accused had not cross-examined the witnesses, but, however, refused to remand the case back to the trial Court and upheld the conviction and sentence by holding that the accused had deliberately not cross-examined the witnesses, though he had the opportunity to do.

12. In this case also, the accused had the opportunity to cross-examine the witnesses, but, he did not choose to and now, the accused cannot cry foul.

13. Taking into consideration the nature of allegations against the petitioner, this Court is of the view that this is not a fit case, in which, suspension of sentence can be granted. Hence, this Criminal Miscellaneous Petition is devoid of merits and accordingly, the same is dismissed.

sd/-

23/03/2018

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

TO

1 THE SESSION JUDGE,  
MAHALIR NEETHIMANDRAM  
(FAST TRACK MAHILA COURT),  
THANJAVUR.



2 THE INSPECTOR OF POLICE,  
AMMAPETTAI POLICE STATION, THANJAVUR DISTRICT.

3 THE SUPERINTENDENT, CENTRAL PRISON, TRICHY

4 THE ADDITIONAL PUBLIC PROSECUTOR  
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

ORDER  
IN  
CRL MP (MD) No.11711 of 2017  
IN  
CRL A (MD) No.527 of 2017  
Date :23/03/2018

PK/RR-CSL/SAR-2/28.02.2018 : 4P/5C