



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

Friday, the Twelfth day of January Two Thousand Eighteen

PRESENT

The Hon`ble Mr.Justice A.M.BASHEER AHAMED

CRL MP(MD) No.1234 of 2017
IN
CRL A(MD) No.42 of 2017

STEPHEN JOSEPH

... PETITIONER/APPELLANT

Vs

STATE REP BY THE
THE DEPUTY SUPERINTENDENT OF POLICE,
SATHANKULAM SUB-DIVISION,
NAZARATH POLICE STATION,
IN CRIME NO.11/2012.

... 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 imposed on the Petitioner/Appellant in S.C.No.136 of 2013 on the file of the IInd Additional District and Session Judge (PCR), Tirunelveli dated 28.12.2016 and enlarge the petitioner on bail pending disposal of the Crl.A.(MD)No.42 of 2017.

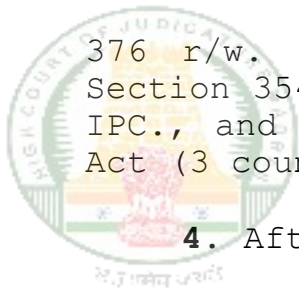
Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.K.SAMIDURAI, Advocate for the petitioner and of MR.R.PRABHU RAMACHANDRAN, Government Advocate (Crl.Side) for the Respondent the court made the following order:-

[Orders Reserved On 23.03.2017]

The accused in S.C.No.136 of 2013, on the file of the learned II Additional District and Sessions Judge (PCR), Tirunelveli, while challenging his conviction and sentence, seeks appeal bail under Section 389(1) Cr.P.C.

2. The petitioner was charged for the offences under Sections 342, 376 r/w 511 (11) counts), 294(b) IPC and Section 4 of Tamilnadu Prohibition of Harassment of Women Act (11 counts), IPC and Section 3(1)(XII) (3 counts) and 3(2)(V) (3 counts) of SC / ST (PoA) Act and Section 23 of Juvenile Justice Act (Care and Protection) Act, 2006 (11 counts) and on 29.11.2016 charges were modified including Section 3(1)(XII) as alternative charge for Section 3(1)(XI) of SC/ST (PoA) Act, in charge No.4 as against the accused.

3. After completion of the trial, the trial Court found that the accused is not guilty for the offences punishable under Section



376 r/w. 511 (11 counts) and punished for lesser offence under Section 354 (8 counts) Section 4 of TNPWH Act (11 counts), 294(b) of IPC., and Section 3(1)(XI) or 3(1)(XII) and 3(2)(V) of SC/ST (PoA) Act (3 counts) and he is acquitted.

4. After trial, he has been convicted and sentenced as under:

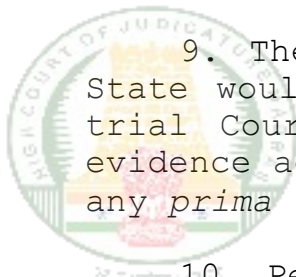
Conviction	Sentence
Section 342 IPC.,	1 Year R.I., + Fine of Rs.1000/- i/d 2 Months S.I.
Section 354 IPC., (8 counts)	Each 2 Years R.I.,
Section 23 of Juvenile Justice (Care and Protection Act) [9 counts]	Each 6 Months R.I., + Fine of Rs.5000/- i/d 1 Year R.I.

1. The above sentences were ordered to run consecutively. Totally for 21-1/2 years and total fine amount is Rs.46,000/-. But for the purpose of remission and or commutation, as per Sections 433 and 433(A) it is directed that the entire 21-1/2 years has to be taken into consideration. Insofar as the conviction for the offence under Section 354 IPC., (8 counts) being the minor offence, the offence under Section 376 r/w 511 the accused is liable to pay a sum of Rs.1,00,000/-, as compensation under Section 357(3) of Cr.P.C., on each count to the eight victims, P.Ws.1 to 4 and P.W.4 and P.W.12, P.W.16, P.W.17 and P.W.18, in default he shall suffer 6 months simple imprisonment for each count (total 4 years - The sentence will begin to run consecutively after the expiration of substantive sentence in case of default).

6. The petitioner has been confined in Central Prison, Palayamkottai from the date of Judgment. The fine amount imposed by the trial Court was not paid.

7. Aggrieved by the order of conviction, the petitioner has filed CrI.A(MD)No.42 of 2017 before this Court and filed this petition seeking suspension of sentence imposed by trial Court during pendency of Criminal Appeal before this Court.

8. The learned counsel appearing for the petitioner / accused would contend that the sentence imposed by the trial Court is excessive and severe by ordering the sentences consecutively. He also points out the admission of P.W.10 that she has visited the Home several occasions and she has not received any complaints from the inmates of the Home. P.W.10 has further admitted that Antrupushpa and Belpkina were working in the said Home at the time of giving the complaint, but P.W.1 deposed in contra. No records were seized regarding the inmates and employees of the said Home. P.W.2 has admitted that there is no eyewitness in this case.



9. The learned Additional Public Prosecutor appearing for the State would submit on filing a counter of the respondent that the trial Court has rightly convicted the accused on appreciation of evidence adduced by the prosecution and the petitioner is not having any *prima facie* case of acquittal in this appeal.

10. Perused the materials on record. Heard and considered the rival submissions made by either side.

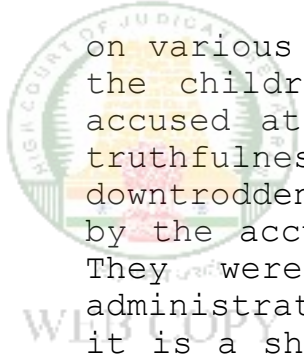
11. The petitioner was conducting an Orphanage Home in the name of "Little angle Children Orphanage (Home)" in Mookkuperi, after obtaining licence from 01.04.2010. In the said Home, there were 23 female children and 13 male children and in view of their poverty, they were residing in the said Home conducted by the petitioner. The petitioner was residing in a rental house situated in the next street of Mookkuperi and as per the direction of the petitioner, 11 female children went to the room in which the petitioner was staying on different dates and the petitioner had confined and abused them sexually by using criminal force with intent to outrage their modesty.

12. Prosecution has examined P.Ws.1 to 22 and marked Exs.P1 to P11. Ex.D1 was marked on the side of the accused. The aggrieved children, against whom the sexual abuse and harassment made by the accused, were examined as P.Ws.1 to 5, 11, 12 and 16 to 18. The case was registered on the written complaint of P.W.1, forwarded to the Police by P.W.10, then Social Welfare Officer.

13. "Little angle Children Orphanage (Home)" in Mookkuperi was conducted by the accused. The office of the accused and said Orphanage were in separate places. The victim in this case are children studying in different classes and were studying in the said Orphanage. P.W.6 was the Homemade and the accused used to name 2 children and demanded her to send food through them. The accused misbehaved with the children, who brought the food to the accused from the Orphanage to his Office and sexually ravished them and if the children refused for the same, the accused beaten the children and also abused the children and their parents with filthy language. The victim belonged to scheduled community of Hindu and Christian. P.W.10 being the then Social Welfare Officer received the information over phone with regard to misdeeds in "Little Angle Children Orphanage (Home)" conducted by the accused enquired and forwarded the complaint to the Police for action, as per the Law.

14. The FIR was registered by P.W.21, who was incharge of Nazareth Police Station on receipt of the complaint from P.Ws.10, P.W.22, the then Deputy Superintendent of Police, Sattankulam Sub Division investigated the case after getting permission from the Superintendent of Police and filed the final report in this case.

15. The present case is only a case of sexual assault and attempt to commit rape as against children in various periods from 18.01.2011 to 18.01.2012 on different dates. It is the case of sexual assault committed against the children studying in the Home



on various period. P.W.10, who reported the crime committed against the children / inmates of the Home has no grudge to grind the accused at all. The delay alone is a not fatal to consider the truthfulness of the prosecution case. The victims are belonging to downtrodden society and the food, shelter and schooling were offered by the accused and they are living under the mercy of the accused. They were staying the Home with constant fear under the administration of the accused and the victims are the children that it is a shame on them and also in the Indian society. Ordinarily, the victim would not intend to get stigma by saying that they are victim of sexual assault and they are the distress of the accused.

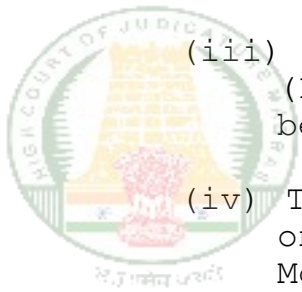
16. According to the prosecution, the alleged sexual abuse and misbehavior of the accused took place in the office room of the accused which is away from the Home. But no witnesses, who were residing nearby has not been examined before the trial Court, though P.W.2 has stated that he has examined the nearby resident of the said office. The petitioner, who is in jail is having age related ailments and he has also produced the medical records in which it is stated that he is aged about 60 years in the year 2015. The petitioner is in jail from the date of Judgment ie., on 28.12.2016. The appeal was preferred on 03.02.2017 and is pending before this Court. The sentences imposed by the trial Court are ordered to run consecutively in this case.

17. Considering the above facts and circumstances of the case, perusing the impugned Judgment and the materials on record and also the fact that the petitioner is aged about 60 years old and he is facing age related deceases, as per the medical records produced by the accused and the appeal is filed in the year 2017 and he is in prison from the date of Judgment ie., on 28.12.2016, I am of the view that certain eminently arguable points are involved in this criminal appeal. They are required to be examined in detail in the main criminal appeal. Further, it will take some time for the disposal of the criminal appeal. They are required to be examined in detail in the main criminal appeal. Further, it will take some time for the disposal of the criminal appeal, this Court is inclined to order suspension of sentence on deposit of Rs.46,000/- towards fine amount, before the concerned Court. Payment of compensation as ordered by the trial Court is also stayed till the disposal of the appeal.

18. On considerations, ordered as under:

(i) Appeal bail granted.

(ii) Substantial sentence alone is suspended on condition that the each petitioner shall execute a bond for Rs.15,000/- (Rupees Fifteen thousand only) with two sureties for the like sum each to the satisfaction of the learned Judicial Magistrate, Sathankulam.



(iii) The petitioner shall deposit a sum of Rs.46,000/- (Forty Six Thousand Only) towards fine amount, before the concerned Court.

(iv) The petitioner shall appear before the said Court on the first working day of every English Calender Month at 10.30 a.m., until further orders.

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sd/-
12/01/2018

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

MPK
TO

- 1 THE IIND ADDITIONAL DISTRICT
AND SESSIONS JUDGE (PCR), TIRUNELVELI
- 2 THE JUDICIAL MAGISTRATE, SATHANKULAM
- 3 DO THROUGH THE CHIEF JUDICIAL MAGISTRATE
THOOTHUKUDI DISTRICT
- 4 THE DEPUTY SUPERINTENDENT OF POLICE,
SATHANKULAM SUB-DIVISION, NAZARATH POLICE STATION,
- 5 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
- 6 THE SUPERINTENDENT, CENTRAL PRISON, PALAYAMKOTTAI.

+1. C.C. to M/S.K.SAMIDURAI Advocate SR.No.731

GJM/CM/VR/SAR-2-17.1.18-5P-8C

ORDER
IN
CRL MP (MD) No.1234 of 2017
IN
CRL A (MD) No.42 of 2017
Date :12/01/2018