



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

Thursday, the Eighth day of November Two Thousand and Eighteen

WEB COPY

PRESENT

The Hon`ble Mrs.Justice R.THARANI

CRL MP (MD) No.7014 of 2018

IN

CRL A (MD) No.265 of 2018

CHELLAPANDI

... PETITIONER/APPELLANT/ACCUSED

Vs

STATE THROUGH,
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
USILAMPATTI,
MADURAI DISTRICT.
IN CRIME NO.62/2015

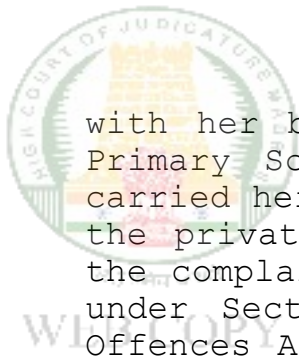
... RESPONDENT/RESPONDENT/RESPONDENT

Petition praying that in the circumstances stated therein and in the petition filed therewith the High Court will be pleased to pass an Interim Order pending disposal of the Criminal Appeal, Suspending the execution of sentence U/s. 9(m) and 10 of Protection of Children from Sexual Offences Act 2012, awarded on the petitioner vide the judgement dated 15/05/2018, passed by the Learned Mahalir Neethimandram, (Mahila Court) Madurai in Spl.S.C.NO.39 of 2016, and thereby to release him on bail to the satisfaction of the said Learned Trial Court.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of Mr.T.K.GOPALAN, Advocate for the petitioner and of Mr.M.CHANDRA SEKARAN, Govt. Advocate (Crl.Side) on behalf of the Respondent, the court made the following order:-

Heard Mr.T.K.Gopalan, learned counsel appearing for the petitioner and Mr.M.Chandra Sekaran, learned Government Advocate (Crl. Side) appearing for the respondent.

2.This Petition is filed to suspend the sentence passed against the petitioner imposed by the learned District Mahila Neethimandram, Madurai in Spl S.C.No.39 of 2016 dated 15.05.2018 pending disposal of the Criminal Appeal.



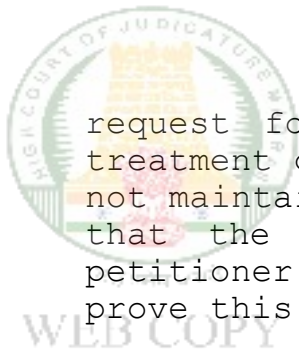
with her brother Jeysurya and other children near Panchayat Union Primary School at E.Ammapatti, the accused closed her mouth and carried her to the Primary School Verandah and the petitioner rubbed the private parts of the minor girl with his private part. Hence, the complainant filed a case against the petitioner for the offence under Section 9(m) and 10 of Protection of Children from Sexual Offences Act, 2012. The trial Court after completion of the trial, convicted the petitioner and sentenced him to undergo five years Rigorous Imprisonment and to pay a fine of Rs.1,000/- (Rupees One Thousand only) in default to undergo one year simple imprisonment.

4.On the side of the petitioner, it is stated that the victim and her grandfather met with an accident and they took treatment at the hospital at Usilampatti. The petitioner has filed a petition under RTI Act to get the treatment particulars and the petition was returned and that it is not denied that the grandfather of the victim took treatment in that hospital. The injury stated to have been caused to the victim is not due to the offence. But it is only due to the accident. It is stated that the petitioner is inside the prison for the past six months and that he is the only bread winner of his family and that there are arguable points in the main appeal and it is prayed to suspend the sentence imposed upon the petitioner till the disposal of the appeal.

5.On the side of the prosecution, it is stated that the defence of the petitioner during the trial is that the injury was caused due to the falling of cricket ball. Now the petitioner is trying to create another story as though the injury was due to some accident. During the cross examination of the witness, the defence was that the injury was due to the playing of cricket. Only to suspend the sentence, the petitioner is creating some documents. There is no specific averments in the document that the grandfather of the victim got injuries. Refusal to furnish some details by the hospital authorities does not mean that the hospital authorities admit some treatment given to the grandfather of the victim.

6.On the side of the petitioner, it is stated that the victim and her grandfather got treatment at Usilampatti and the victim got treatment at Usilampatti. But the occurrence had took place at Ammapatti which is several kilometers away from Usilampatti.

7.A perusal of the records reveals that the petitioner has already filed a petition in CrI.M.P.(MD)No.4132 of 2018 to suspend the sentence imposed on him. This Court by order dated 10.07.2018, dismissed the petition. Hence, the petitioner has filed this present petition for the second time. It is seen that the petitioner has addressed the Medical Officer, Usilampatti to furnish the details as to the treatment given to one Gunasekaran on 09.11.2015. The letter was rejected by the Information Officer as it is not within the purview of Section 2(f) of RTI Act. The interpretation of the petitioner is that the hospital authorities did not deny giving treatment to Gunasekaran on the specific date. The rejection of a



request for information cannot be presumed as acceptance of the treatment given to Gunasekaran. This contention of the petitioner is not maintainable. During the trial, the defence of the petitioner is that the the victim was injured due to playing cricket. The petitioner is now raising a new point and there is no evidence to prove this.

8.A perusal of the records reveals that the victim is a 8 years old child studying second standard and it is seen that the statement of the victim was recorded under Section 164 Cr.P.C., and the matter to be decided in this petition and the main appeal are one and the same. Considering the marital status of the petitioner and considering the age of the victim girl and also considering the grave nature of the offence and considering the flimsy ground raised in this petition, this Court is not inclined to suspend the sentence imposed upon the petitioner at this stage and hence, this Criminal Miscellaneous Petition is dismissed.

sd/-
08/11/2018

/ TRUE COPY /

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

TO

- 1.THE MAHILAR NEETHIMANDRAM
(MAHILA COURT),
MADURAI.
- 2.THE SUPERINTENDENT
CENTRAL PRISON,
MADURAI.
- 3.THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
USILAMPATTI,
MADURAI DISTRICT.
- 4.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI.

+1. C.C. to Mr.P.THAMBIDURAI, Advocate SR.No.21385
ORDER
IN
CRL MP(MD) No.7014 of 2018
IN
CRL A(MD) No.265 of 2018
Date :08/11/2018