

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Wednesday, the Third day of April Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. SATHYANARAYANAN

and

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.943 of 2019

IN CRL.A.NO.47 OF 2019

1 MOHANRAJ @ MOHAN
2 MATHIVANAN

[PETITIONERS / APPELLANTS]

Vs

THE STATE REP BY ITS, [RESPONDENT]
THE DEPUTY SUPERINTENDENT OF POLICE,
CBCID,
CUDDALORE DISTRICT.

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in CRL.A.NO.47 OF 2019 on the file of the High Court, the High Court will be pleased to suspend the execution of the sentence dated 04.01.2019 passed in S.C.No.20 of 2018 against the Petitiones/Appellants by the Learned Mahila Judge, Cuddalore and the Petitioner/Appellants who are remanded to Judicial custody after judgment be released on bail pending disposal of the above CRL.A.NO.47 OF 2019

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in CRL.A.NO.47 OF 2019 on the file of the High Court and upon hearing the arguments of M/S.N.RAMESH Advocate for M/S.J.FRANKILIN, Advocate for the petitioner and of MR.R.PRATHAP KUMAR ADDITIONAL PUBLIC PROSECUTOR on behalf of the Respondent the court made the following order:-

[Order of the Court was made by M.SATHYANARAYANAN, J.]

The petitioners are arrayed as Accused Nos.14 and 15 and they were found guilty under Section 6 of the POCSO Act, 2012 and they are imposed with the following sentences:

(i) A14 is convicted and sentenced under Section 6 of POCSO Act 2012 (2 counts) to undergo Rigorous Imprisonment for Life for each count (double life imprisonments). He is ordered to pay a fine of Rs.1,00,000/- for each count (total fine Rupees Two Lakhs only), in

default of payment of fine, he shall further undergo Simple Imprisonment for period of three years for each default.

(ii) A15 is convicted and sentenced under Section 6 of POCSO Act 2012 (2 counts) to undergo Rigorous Imprisonment for Life for each count (double life imprisonments). He is ordered to pay a fine of Rs.1,00,000/- for each count (total fine Rupees Two Lakhs only) in default of payment of fine, he shall further undergo Simple Imprisonment for period of three years for each default.

vide impugned judgment dated 04.01.2019 on the file of the Mahila Court, Cuddalore in Special and challenging the legality of the conviction and sentence imposed, had filed the present appeal and pending disposal of the same, has filed this petition for suspension of substantive sentence of imprisonment.

2. The learned counsel appearing for the petitioner would submit that even as per the testimonies of the concerned victim girls, the alleged offences took place prior to 08.06.2014 and 05.08.2014 and admittedly, no distinct charge has been framed against them for the commission of offence prior to the year 2014 and as such, the entire trial is vitiated.

3. The learned counsel appearing for the petitioner would further submit that the entire case of prosecution is bristled with very many inconsistencies and infirmities and in any event, the Trial Court ought to have awarded benefit of doubt and acquitted them and since the petitioners are having bright chance of success in the Criminal appeal, prays for suspension of substantive sentence of imprisonment.

4. Mr.R.Prathap Kumar, learned Additional Public Prosecutor appearing for the State has drawn attention of this Court to the testimonies of victim girls and would submit that the victims had been repeatedly subject to forceful physical abuse and the Trial Court has taken into consideration the testimonies of victims, which found supported and corroborated with all other material particulars and evidence and rightly reached the conclusion and imposed them with a maximum sentence and in the facts and circumstances of the case, the petitioners / appellants did not deserve any sympathy and prays for dismissal of this petition.

5. This Court has carefully considered the rival submissions and also perused the materials placed before it.

6. A perusal and consideration of the testimonies of the victims would *prima facie* disclose that the petitioners/appellants are involved in the commission of heinous offences for having physically abused the hapless victims, who are minors at the relevant point of time. The points urged by the learned counsel appearing for the petitioners / appellants as to the improper framing of charge, this Court is of the considered view that the same can be appreciated only during the course of advancing arguments in the criminal appeal.

7. In the considered opinion of this Court, it is not a fit case wherein suspension of sentence is to be granted to the petitioners/appellants.

8. In the light of the reasons above, this Court is not inclined to suspend the substantial sentence of imprisonment imposed on the petitioners/appellants.

9. Therefore, the Criminal Miscellaneous Petition is dismissed.

-sd/-

03/04/2019

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 MAHILA JUDGE,
CUDDALORE.

2 THE SUPERINTENDENT,
CENTRAL JAIL, CUDDALORE.

3 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

4 THE DEPUTY SUPERINTENDENT OF POLICE,
CBCID, CUDDALORE DISTRICT.

+1C.C. to M/S.J.FRANKILIN Advocate on payment of necessary charges SR NO.7096

WEB COPY

Order

in

CRL MP.943/2019

in

CRL.A.47/2019

Date :03/04/2019

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MK:11/04/2019

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