

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Criminal Jurisdiction)

Thursday, the Thirtieth day of May Two Thousand Nineteen

PRESENT

The Hon`ble Mr Justice M. NIRMAL KUMAR

CRIMINAL MISCELLANEOUS PETITION No.6591 of 2019

IN CRL.A.NO.10 OF 2019

SANKAR

[PETITIONER]

Vs

THE STATE OF TAMIL NADU,
REP. BY ITS INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
PANRUTI,
CUDDALORE DISTRICT,
(CRIME NO.4/2018).

[RESPONDENT]

Petition praying that in the circumstances stated therein and in the Memorandum of Grounds in Criminal Appeal No.10/2019 on the file of the High Court, the High Court will be pleased to suspend the sentence imposed on the petitioner in Spl.S.C.No.27 of 2019 dated 11.12.2018 on the file of the Mahila Court, Cuddalore and enlarge the petitioner on bail pending disposal of the Criminal Appeal No.10 of 2019[CRL.MP.NO.6591 OF 2019]

Order : This petition coming on for orders upon perusing the petition and the Memorandum of Grounds in Crl. Appeal No.10/2019 on the file of the High Court and upon hearing the arguments of MR. M/S.R.SANKARASUBBU Advocate for the petitioner and of MR.S.THANKIRA Government Advocate[crl.side] on behalf of the Respondent the court made the following order:-

The petitioner is the sole accused in this case and he was convicted by the learned Judge, Mahila Court, Cuddalore in Special Sessions Case No.27 of 2018 dated 11.12.2018, for the offence punishable under Section 6 of the Prohibition of Children from Sexual Offence Act, 2012 and sentenced to undergo rigorous imprisonment for a period of twenty years and to pay a fine of Rs.2 lakhs, in default, the accused shall further undergo simple imprisonment for a period of five years.

2. During trial, nine witnesses have been examined by the prosecution. PW1 is the victim. PW2 and PW3 are the mother and brother of PW1. PW5 is the member of Child Welfare Committee, Cuddalore. PW6 is the witness for observation mahazar. PW7 is the Doctor, who proved the potency of the petitioner. PW8 is the Headmistress of the school in which PW1 studied. PW9 is the investigating Officer in this case.

3. The petitioner is a married man having two female children through one Jayanthi. Thereafter, he had living-in relationship with PW1 and gave birth to two male infants of 3 and 1 ½ years respectively. PW2 is the mother and PW3 is the brother of PW1, who had supported and corroborated PW1. According to them, the father of PW1 had admitted PW1 in the school on a later age and hence, her date of birth was given as 16.03.2000, though she was much elder and the date even in the school certificate was not correct. The petitioner had living-in relationship with PW1, which was known to the first wife of the petitioner namely Jayanthi and they were living with cordiality. Thereafter, dispute and rivalry aroused between Jayanthi and PW1, which led to initiation of the above case. PW1/Survivor in the above case had categorically stated that neither she nor her parents or her family members made any complaint about PW1's relationship with the petitioner. She further states that her complaint Ex.P2 had been given under there coercion. PW1's father had passed away suddenly. Hence, PW1's family was left in dire state. Suddenly, it necessitated PW1 to join in the shop of the petitioner and work there. During this time, the relationship between PW1 and the petitioner had developed, which instituted them into a living-in relationship and through the above said relationship they had two infants of age 3 and 1½ years respectively.

4. In their evidence PW1, PW2 and PW3 have categorically stated that the age of PW1 as per the record is not proper and correct. Due to the circumstances prevailing therein, the wrong age was entered in Ex.P1. The other witnesses viz., Doctor, a member of Child Welfare Committee, Cuddalore, the Investigating Officer and other witnesses not supported the case of the prosecution. It is pertinent to note that the petitioner's first wife namely Jayanthi, who had gave a petition to the Child Welfare Committee, Cuddalore on 01.02.2018 has not been examined in this case. On the date of the complaint PW1 was admittedly a major and she was well above twelve years and hence there could be no aggravated sexual assault. Further exemption under Section 375 of IPC, it could not be stated that there was rape or forcible sexual act on PW1. The trial Court on the available evidence had acquitted the petitioner for the offence under Section 9 of Prohibition of Child Marriage Act 2006 and Section 294(b) and 506 (ii) of IPC and had found guilty for the offence punishable under Section 6 of POCSO Act.

5. The learned counsel for the petitioner vehemently argued that on all the set of facts, the trial Court had come to a conclusion that there is no charge of child marriage and criminal intimidation on the same set of facts. Therefore, the petitioner could not be found guilty under Section 6 of the POCSO Act. Further, today PW1 had appeared before this Court and filed an affidavit and reiterated about her voluntarily relationship with the petitioner and about her age. Further she has stated in the interest of her minor infants and herself have now become orphanous to support them. Hence, the petitioner's presence is imperative. The petitioner's affidavit is in consensus to the affidavit of PW1.

the fact that already the appellant has paid the fine amount and also considering the welfare of the infants and of PW1, the sentence of imprisonment is suspended and the petitioner is directed to be enlarged on bail on condition that the petitioner shall execute a bond for a sum of Rs.10,000/- (Rupees ten thousand only) with two sureties each for a like sum to the satisfaction of the learned Sessions Judge, Mahila Court, Cuddalore. The petitioner shall appear before the Sessions Judge, Mahila Court, Cuddalore on the first working day of every English Calendar month until further orders.

-sd/-

30/05/2019

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 SESSIONS JUDGE
MAHILA COURT, CUDDALORE

2 THE CHIEF JUDICIAL MAGISTRATE
CUDDALORE [FOR INFORMATION]

3 THE SUPERINTENDENT,
CENTRAL PRISON, CUDDALORE

4 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
PANRUTI, CUDDALORE DISTRICT,

5 THE PUBLIC PROSECUTOR
HIGH COURT, MADRAS.

C.C. to M/S.R.SANKARASUBBU Advocate on payment of necessary charges SR.NO. 10496

Order

in

CRL MP.6591/2019

IN CRL.A.NO.10 OF 2019

Date :30/05/2019

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RD 31/05/2019

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