



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

Friday, the Twenty First day of June Two Thousand Nineteen
PRESENT

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The Hon`ble Mr.Justice M.SATHYANARAYANAN
and
The Hon`ble Mr Justice B.PUGALENDHI

CRL MP(MD) No.4531 of 2019
IN
CRL A(MD) No.221 of 2019

CHIRANJEEVI

... PETITIONER/APPELLANT/ACCUSED NO.5

Vs

THE STATE, THROUGH
THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
SIVAGANGAI, SIVAGANGAI DISTRICT.
CRIME NO.3/2018

... RESPONDENT/RESPONDENT/DEFACTO
COMPLAINANT

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 by the Learned Sessions Judge, Mahalir Neethimandram, Madurai in S.C.No.10/2019 and enlarge the petitioner on bail pending disposal of the above Crl.A

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of MR.A.HAJA MOHIDEEN, Advocate for the petitioner and of MR.S.CHANDRASEKAR, 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 petitioner is arrayed as A.5 in S.C.No.10 of 2019, on the file of the Principal Sessions Court/Mahalir Neethimandram, Madurai and he along with four other accused were charged for the commission of the offences, which are as follows:

- A.1 120(b), 366(A) I.P.C., 10 r/w 9(g), 6 r/w 5(h), 6 r/w 5(g) of POCSO Act.
- A.2 120(b), 294(b), 352, 366(A) I.P.C., 10 r/w 9(g), 6 r/w 5(g) of POCSO Act.
- A.3 120(b), 366(A) I.P.C., 10 r/w 9(g), 6 r/w 5(g) of POCSO Act.
- A.4 120(b), 366(A) I.P.C., 10 r/w 9(g), 6 r/w 5(g) of POCSO Act.
- A.5 120(b), 366(A) I.P.C., 17 r/w 6, 10 of POCSO Act.

2. The petitioner/A.5 was convicted and sentenced as follows:

Rank of the Accused	Conviction u/s.	Sentence awarded
A.5	366(A) I.P.C.	To undergo rigorous imprisonment for five years and to pay a fine of Rs.5000/- in default to undergo simple imprisonment for six months.
	17 r/w 6 and 10 of POCSO Act	To undergo rigorous imprisonment for 20 years and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for one year.

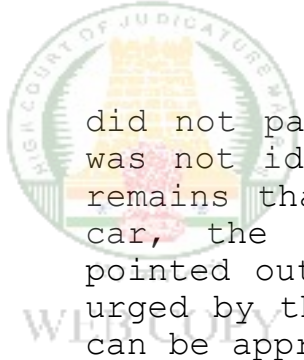
The sentences of imprisonment were ordered to be run concurrently. Challenging the legality of the said conviction and sentence, the petitioner/A.5 has preferred the present appeal and pending appeal, he had filed the present petition seeking suspension of the substantive sentences of imprisonment.

3. The learned Counsel appearing for the petitioner would submit that admittedly the petitioner was a driver of the car, in which, the victim girl was said to have been kidnapped by A.1 to A.4 and even as per the testimony of P.W.1 - the victim girl, A.1 to A.4 sexually assaulted and exploited her and the petitioner/A.5 was not identified during the test identification parade and was identified only in Court and there are very many infirmities and inconsistencies in the case projected by the prosecution and that on the date right from the arrest, he continues to be incarcerated and further, the petitioner is recently married and prays for suspension of the substantive sentences of imprisonment.

4. Per contra, Mr.S.Chandrasekar, learned Additional Public Prosecutor appearing for the State would submit that the victim was aged about 15 years and she was forcibly taken from her parental home, ransacked and abused by A.1 to A.4 and for the fact that the victim was forcibly taken in the car driven by A.5, it could not be said that the offence should not have been committed by A.5 and the points urged by the learned Counsel appearing for the petitioner/appellant can be appreciated by this Court only at the time of final hearing of the appeal and hence, he prays for dismissal of this petition.

5. Heard the rival submissions and perused the materials placed before this Court.

6. A perusal of the testimony of P.W.1 - the victim girl, who is aged about 15 years, would disclose that the car, in which the victim was taken, was driven by A.5 and in the said car, the victim girl was forcibly abused and ransacked by A.1 to A.4. Though it was vehemently contended by the learned Counsel appearing for the petitioner that even as per the testimony of P.W.1, the petitioner



did not participate in the commission of the offences and that he was not identified during the test identification parade, the fact remains that he was identified in the Court as a driver, in whose car, the victim was taken and subsequently abused. As rightly pointed out by the learned Additional Public Prosecutor, the points urged by the learned Counsel appearing for the petitioner/appellant can be appreciated only at the time of final disposal of the appeal. Therefore, this Court is not inclined to consider the said ground for consideration in this application.

7. In the result, this Criminal Miscellaneous Petition is dismissed.

8. This Court, taking into consideration the fact that the petitioner/A.5 did not participate in the commission of offence and the period of his incarceration right from arrest, directs the Registry to list this Criminal Appeal for final hearing expeditiously.

sd/-
21/06/2019

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

TO

- 1 THE SESSIONS JUDGE,
MAHALIR NEETHIMANDRAM, MADURAI.
- 2 THE INSPECTOR OF POLICE,
ALL WOMEN POLICE STATION,
SIVAGANGAI, SIVAGANGAI DISTRICT,
- 3 THE SUPERINTENDENT OF POLICE,
CENTRAL PRISON, MADURAI.
- 4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1 CC to Mr.A.HAJA MOHIDEEN, Advocate (SR-10257[I] dated 21/06/2019)

ORDER
IN
CRL MP (MD) No.4531 of 2019
IN
CRL A (MD) No.221 of 2019