



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

Thursday, the Fifth day of September Two Thousand Nineteen

WEB COPY

PRESENT

The Hon`ble Mr.Justice V.PARTHIBAN

CRL MP(MD) No.7782 of 2019

IN

CRL A(MD) No.405 of 2019

GOBINATH

... PETITIONER/APPELLANT

Vs

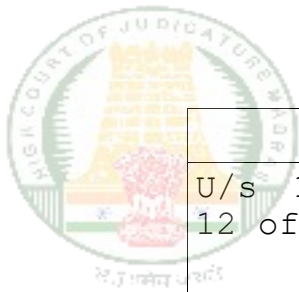
THE STATE REP BY
THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, SATTUR,
VIRUDHUNAGAR DISTRICT (CRIME NO.2 OF 2017)

... 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 passed by the learned Sessions Judge for Fast Track Mahila Court, Virudhunagar at Srivilliputtur in Spl.S.C.No.19 of 2017 dated 16.08.2019 pending disposal of the CRL.A (MD) No.405 of 2019.

Order : This petition coming on for orders upon perusing the petition filed in support thereof and upon hearing the arguments of M/S.LAKSHMI GOPINATHAN, Advocate for the petitioner and of MR.M.ANANTHA DEVI, Govt. Advocate(Crl.side) on behalf of the Respondent the court made the following order:-

The petitioner herein is the accused in Spl. S.C. No.19/2017 on the file of the Sessions Judge, Mahila Court (Fast Track Court), Srivilliputtur, Virudhunagar District, and he was tried for the offences under Section 11 (i) (iv) r/w 12 and Section 8 of the POCSO Act and Section 506 (ii) IPC and vide the impugned judgment dated 16.08.2019, the trial court convicted and sentenced the accused as under :-



WEB COPY

Section	Sentence
U/s 11 (i) (iv) r/w 12 of POCSO Act	Convicted and sentenced to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.2,500/-, in default to undergo rigorous imprisonment for a period of two months.
U/s 8 of POCSO Act	Convicted and sentenced to undergo rigorous imprisonment for a period of three years and six months and to pay a fine of Rs.5,000/-, in default to undergo rigorous imprisonment for a period of six months.

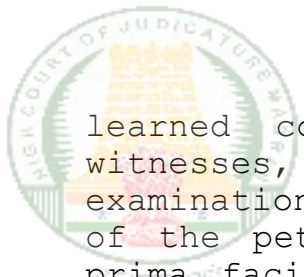
The sentences were ordered to run concurrently and set off was also granted u/s 428 Cr.P.C. The petitioner, challenging the legality of the said conviction and sentence, has filed the present appeal and pending disposal of the appeal, has filed this petition praying for suspension of the substantive sentence of imprisonment.

2. Learned counsel appearing for the petitioner submits that though many witnesses have been examined by the prosecution, however, all the witnesses are interested witnesses and in the absence of any independent witness, placing reliance on the testimony of interested witnesses to bring home the charge against the accused, in the circumstances of the case, is wholly inappropriate and not justified. It is the further submission of the learned counsel for the petitioner that there are very many contradictions and improvements in the testimony of the witnesses, which has not been properly appreciated by the trial court and, therefore, prays for suspension of sentence.

3. Per contra, Ms.M.Anantha Devi, learned Government Advocate (Crl. Side), appearing for the respondent submitted that the prosecution, through cogent and convincing testimony, has proved the offence committed by the accused and the trial court, on proper appreciation of the oral and documentary evidence has convicted and sentenced the accused and, therefore, this petition for suspension of sentence is liable to be dismissed.

4. This Court gave its careful consideration to the submissions on either side and also perused the materials available on record.

5. A perusal of the materials available on record show that no independent witness has been examined by the prosecution, though the occurrence is alleged to have been taken place in an open place. Further, the contradictions and improvements pointed out by the



learned counsel for the petitioner in the testimony of the witnesses, who are alleged to be interested, coupled with non-examination of independent witness also adds weightage to the case of the petitioner and, therefore, the petitioner has made out a prima facie case for grant of suspension. Further, taking into consideration the fact that the petitioner is under incarceration and being a student and that the appeal is not likely to be taken up for hearing in the near future, this Court is of the considered view that this is a fit case to grant suspension of sentence.

6. In the light of the above facts and circumstances, this Court is inclined to suspend the substantive sentence of imprisonment imposed on the petitioner/accused. Accordingly, the miscellaneous petition is allowed and the substantive sentence of imprisonment alone stands suspended pending disposal of the appeal and the petitioner is directed to be enlarged on bail on condition that the petitioner executes a bond for a sum of Rs.10,000/- along with two sureties, each for a likesum, to the satisfaction of the learned Sessions Judge, Mahila Court (Fast Track Court), Srivilliputtur, Virudhunagar District, and on further condition that the petitioner/accused shall appear before the said Court, viz., Mahila Court (Fast Track Court), Srivilliputtur, Virudhunagar District, at 10.30 a.m., on the first working day of every English calendar month until further orders.

sd/-

05/09/2019

/ TRUE COPY /

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

TO

1 THE SESSIONS JUDGE,
FAST TRACK MAHILA COURT, VIRUDHUNAGAR AT
SRIVILLIPUTUR.

2 THE INSPECTOR OF POLICE
ALL WOMEN POLICE STATION, SATTUR,
VIRUDHUNAGAR DISTRICT

3 THE SUPERINTENDENT,
CENTRAL PRISON, MADURAI.



4 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

+1. C.C. to M/S.POLAX LEGAL SOLUTIONS Advocate SR.No.14806

ORDER

IN

CRL MP(MD) No.7782 of 2019

IN

CRL A(MD) No.405 of 2019

Date :05/09/2019

TR/PN/SAR-III (12.09.2019) 4P 6C